

## EXPLANATORY MEMORANDUM

### I) General

#### A) ASSESSMENT OF THE EXISTING LEGAL SITUATION

The area of pyrotechnic articles is regulated in particular by Act No 206/2015 on pyrotechnic articles and amending certain acts (the Pyrotechnics Act), as amended (hereinafter the 'Pyrotechnics Act'). The Pyrotechnics Act contains not only national regulation but also transposition regulation.

This Act ensures the transposition of:

- Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (hereinafter 'Directive 2013/29/EU') and
- Commission Implementing Directive 2014/58/EU of 16 April 2014 establishing, pursuant to Directive 2007/23/EC of the European Parliament and of the Council, a system for the traceability of pyrotechnic articles (hereinafter 'Directive 2014/58/EU').

The following implementing legislation for the Pyrotechnics Act has been issued:

- Decree No 284/2016 implementing certain provisions of the Pyrotechnics Act;
- Decree No 288/2015 on the performance of fireworks activity; and
- Government Regulation No 208/2015 on technical requirements for pyrotechnic products and making them available on the market.

The above-mentioned legislation regulates the area of pyrotechnic articles comprehensively and across the board, which means, in particular, the definition of individual categories of pyrotechnic articles, the verification and labelling of pyrotechnic articles, the rules and conditions for affixing the CE marking, the obligations of economic operators (manufacturers, importers and distributors), the handling of pyrotechnic articles, their storage, the professional competence required for certain pyrotechnic articles handled, and the performance of public administration in the area of pyrotechnic articles, in particular their supervision, as well as the conditions for gathering and providing information and the area of infractions.

The Pyrotechnics Act is effective from 4. 9. 2015.

The draft Act concerns both the national part and the transposition part and covers the following main areas:

- 1) professional competence;
- 2) obtaining proof of professional competence;
- 3) change of supervisory authority;
- 4) corrections in connection with the correction of the Czech version of Directive 2013/29/EU;
- 5) the powers of municipalities to issue generally applicable decrees (hereinafter 'by-laws');

- 6) other adjustments;
- 7) amendment of other acts.

The Act amends Act No 634/2004 on administrative fees, as amended (hereinafter the 'Administrative Fees Act'), and Act No 87/2023 on market surveillance of products and amending related acts (hereinafter the 'Product Market Surveillance Act').

### **Legal situation in each area:**

#### **Re 1) professional competence**

The Pyrotechnics Act defines several categories of pyrotechnic articles into which they are classified, depending on their use, purpose and degree of danger. Fireworks are in categories F1, F2, F3 and F4, theatrical pyrotechnics are in categories T1 and T2 and other pyrotechnic articles (used e.g. in the automotive industry) are in categories P1 and P2. For each category of pyrotechnic articles there are restrictions, especially age restrictions, on their use. The strictest restrictions apply to pyrotechnic articles of categories F4, T2 and P2. These are pyrotechnic articles that are particularly dangerous, particularly in view of the large quantities of explosive substances contained in these articles. These products can therefore only be handled by a narrow group of persons, namely so-called professionally competent persons, who demonstrate a high level of expertise necessary for the handling of these pyrotechnic articles. Because of the great danger posed by these pyrotechnic articles, the lay (non-professional) public cannot be permitted to handle them.

From the point of view of professional competence, § 36 of the Pyrotechnics Act, which determines who is considered to be professionally competent, is key. According to this provision, a natural person who holds a certificate of professional competence for handling pyrotechnic articles of category P2 in relation to the purchase, sale, destruction or disposal of such pyrotechnic articles, or of category T2 or F4 in relation to the purchase, sale, destruction or disposal of such pyrotechnic articles and the performance of fireworks shall be considered to be a person with professional competence.

Furthermore, a corporate entity and a sole trader dealing with pyrotechnic articles through a natural person holding a certificate of professional competence shall be considered a professionally competent person. Since economic operators dealing primarily with pyrotechnic articles can only be corporate entities and sole traders, they are thus allowed to carry out activities for which professional competence is required. Since only a natural person can hold a certificate of professional competence, these corporate entities and sole traders thus carry out those activities through these natural persons.

As mentioned above, in the current version of the Pyrotechnics Act, professional competence is required for pyrotechnic articles of categories F4, T2 and P2 when they are purchased, sold, destroyed or disposed of and for categories F4 and T2, also for carrying out fireworks activities.

The draft Pyrotechnics Act extends the professional competence, on the one hand, for pyrotechnic articles of categories F4, T2 and P2, extending the list of activities for which professional competence will be required, and on the other hand, introduces it for the first time for certain activities as regards category F3.

#### **Re 2) obtaining proof of professional competence**

This area of the Pyrotechnics Act is closely linked to the professional competence described above, since in order for a natural person (and, through it, a corporate entities and sole trader) to be able to be a professionally competent person, it is necessary for that person to hold a certificate of professional competence. Obtaining a certificate of professional competence is governed by § 37 and § 38 of the Pyrotechnics Act. § 37 regulates the procedure for obtaining a certificate of professional competence, while § 38 regulates the professional training that every applicant for a certificate of professional competence must complete.

According to the current version of the Pyrotechnics Act, anyone interested in obtaining a certificate of professional competence must submit an application to the Czech Mining Authority (hereinafter 'CMA'), which is the competent authority for conducting administrative proceedings on this application. Among other requirements for obtaining a certificate of professional competence, one of the conditions is to complete professional training and successfully pass the final examination [§ 37(5) of the Pyrotechnics Act]. Professional training is intended only for applicants for a certificate of professional competence. Therefore, anyone wishing to obtain this certificate must first submit an application to the CMA and only then, as soon as they become an applicant, must apply for professional training, which is provided by the Czech Proof House for Arms and Ammunition (hereinafter 'CPHAA') together with the CMA. In practice, this situation means that the proceedings under the Administrative Code must be interrupted after the application has been submitted to the CMA until the applicant has completed this training and passed the final examination.

The current situation thus causes difficulties not only for the CMA, which always has to suspend the administrative procedure on the application, but also for the applicants themselves, for whom this method is very confusing. In addition, the legislation requires at least 5 applicants for the commencement of professional training. Therefore, if there are not at least 5 applicants who submit an application to the CMA, who then apply for professional training, the CPHAA will not start professional training.

### Re 3) change of supervisory authority

Supervisory authorities for pyrotechnic articles are regulated in § 55 of the Pyrotechnics Act. These are the CPHAA (referred to in the Pyrotechnics Act as the 'Proof House'), the notifying authority (this is the Office for Standards, Metrology and Testing – hereinafter 'OSMT'), the Czech Trade Inspection Authority (hereinafter 'CTIA') and the district mining authorities (hereinafter 'DMA'). The CPHAA checks compliance with the obligations laid down in the Pyrotechnics Act, with the exception of what is entrusted to another of the above-mentioned supervisory authorities. The other supervisory authorities thus operate only in partial sections of the Pyrotechnics Act, with the largest volume of audited obligations falling on the CPHAA.

### Re 4) corrections in connection with the correction of the Czech version of Directive 2013/29/EU

In Official Journal L38/42 on 10. 2. 2018 a corrigendum to the Czech language version of Directive 2013/29/EU was published, which, in particular, amended some of the terms used in that Directive and also included a linguistic amendment.

### Re 5) authority of municipalities to issue by-laws

In the current legal situation, by-laws passed in administrative autonomy are used for the territorial regulation of pyrotechnics. The legal basis in this case is § 10 of Act No 128/2000 on municipalities (municipal establishment), as amended. Under that provision, a municipality may impose obligations within the administrative autonomy of a by-law in order, inter alia, to safeguard local matters of public order; in particular, it may determine which activities that could disturb public order in a municipality or be contrary to good morals, the protection of safety, health and property may be carried out only in places and at times designated by the by-law, or it may provide that in certain public areas in a municipality such activities are prohibited. By-laws can also be issued to ensure the cleanliness of streets and other public areas, to protect the environment, greenery in buildings and other public greenery, and for the use of municipal facilities serving the needs of the public. Last but not least, a municipality may issue an by-law in cases where a special Act so provides [§ 10(d) of municipal establishment]. The ability of municipalities to issue by-laws to regulate the use of pyrotechnic articles was approved by the Constitutional Court in its rulings of 13. 9. 2006, case No Pl. ÚS 57/05 (Nový Bor), and of 8. 6. 2010, case No Pl. ÚS 58/05 (České Velenice).

#### Re 7) amendment of other acts

In connection with the amendment to the Pyrotechnics Act, it is necessary to amend some other acts, namely the Act on Administrative Fees and the Act on Market Surveillance of Products.

### **B) EXPLANATION OF THE NECESSITY OF THE DRAFT LEGISLATION AND JUSTIFICATION OF ITS MAIN PRINCIPLES**

In general regarding the issue of pyrotechnic articles

The existing legislation appears to be insufficient to ensure the protection of human and animal health, public order and the environment especially when fireworks are used (categories F1 to F4).

Fireworks are harmful to human health and the environment. As a result of the use of pyrotechnics, a large number of dangerous and harmful substances enter the air every year. Many of these are in a form that does not occur naturally in nature.

The draft therefore not only expands the list of activities for which professional competence is required, but also enshrines an explicit ban on the sale of all pyrotechnic articles (except category F1) in stalls or in temporary buildings.

There is also a more detailed regulation of the use of pyrotechnic articles in the form of an explicit ban on the use of pyrotechnic articles of all categories, with the exception of category F1, within 250 m of selected high-risk facilities and operations (§ 35b). These include, for example, hospitals, hospices, animal shelters, rescue stations, animal farms, etc. A special provision also allows municipalities to make broader use of a by-law to enshrine further prohibitions or restrictions on the use of fireworks throughout the municipality (§ 35c).

In 2023, the Czech Academy of Sciences prepared an expert opinion on the impact of pyrotechnics on human health and the environment. According to the opinion, pyrotechnic smog is full of harmful compounds. Among other things, it is a large number of toxic gas products (sulphur oxides, phosphorus, nitrogen), as well as organic compounds such as formaldehyde, acetaldehyde, butyl acetate or various organic hydro-peroxides. Chlorinated toxic substances and polycyclic aromatic hydrocarbons can also be formed, which are proven carcinogens and some of

them cause congenital developmental defects. In the environment, they are very difficult to decompose and accumulate in nature and in living organisms.

From the point of view of human health, dust particles released during the firing of pyrotechnics are also very problematic. Their concentrations in the air during New Year's celebrations are abnormally high, with limits exceeded by tens to hundreds of percent. Combustion of fireworks also generates gaseous pollutants, such as carbon monoxide, sulphur dioxide, nitrous oxide or ground-level ozone, which can to some extent affect the chemical composition of the atmosphere and the local climate. The average concentration of sulphur dioxide can be increased up to 10x, nitrous oxide or nitrogen dioxide up to 4x by the use of pyrotechnics.

When using New Year's Eve pyrotechnics, the concentration of PM10 and PM2.5 dust particles increases. After midnight, they increase especially in cities where the intensity of use is highest. The most affected are squares or housing estates in larger cities, where there is a high intensity of use and at the same time a relatively closed space, which reduces the dispersion of pollution into the environment, and this thus accumulates. Places such as the Brno-Children's Hospital, where one of the monitoring stations of the Czech Hydrometeorological Institute is located, are also impacted by the use of pyrotechnics. The hospital is located approximately one kilometre from the centre of Brno. According to data from the New Year's Eve celebrations at the end of 2023, the value at midnight increased threefold. In some years, PM10 concentrations also reached 272  $\mu\text{g}\cdot\text{m}^{-3}$ , which was the highest value measured on New Year's Eve in the Czech Republic. Concentrations may vary from year to year, depending on the quantity fired as well as the weather or the distance of the firing from the monitoring stations.

The impact of the use of pyrotechnics on air quality has long been monitored and evaluated by the Czech Hydrometeorological Institute in relation to the concentrations of the most monitored pollutants, which have set emission limits for the protection of human health, i.e. the concentrations of suspended particles PM10 and PM2.5. The use of fireworks is essentially an imperfect combustion process, during which mainly suspended particles (primarily PM2.5 and smaller) enter the air, as well as mixtures of various metals (ensuring the colour of the fireworks), nitrogen oxides and sulphur dioxide, and polycyclic aromatic hydrocarbons, including carcinogenic benzo(a)pyrene.

The use of fireworks leads to a short-term (episodic) but significant increase in concentrations of pollutants, which is recorded in the order of hours during about two days at the turn of the year. The use of fireworks may result in the limit concentration of PM10 of 50  $\mu\text{g}\cdot\text{m}^{-3}$  being exceeded for 24 hours. Average hourly PM10 concentrations can range from 30-180  $\mu\text{g}\cdot\text{m}^{-3}$  during New Year's Eve celebrations in large cities around midnight. The significant concentration range is due to the current dispersion conditions and the current level of pollution. Very high levels of pollution can have a negative impact on human health even during short-term exposure, especially for vulnerable people such as those with chronic respiratory or cardiovascular problems, young children or the elderly. The level of pollution from the use of fireworks tends to be highest in places where the greatest quantities are used, especially in poorly ventilated areas. Typically, it is, for example, a square or housing estate in larger cities, where there is a high concentration of fireworks and at the same time a relatively enclosed space, which reduces the dispersion of pollution into the environment and leads to its accumulation at that location.

The amateur use of fireworks poses an incomparably higher risk than fireworks conducted by professional firework launchers. While conventional fireworks explode at a height of 20 to 40 m above ground level, professional fireworks usually explode at 100 m, where pollutants can disperse much more efficiently in the atmosphere.

While the risks of injuries associated with the use of fireworks are well known to the public (e.g. toes, limbs, fatal head injuries, etc.), the toxic effects of emissions are underestimated, even though they may have serious and sometimes long-lasting consequences. Dust particles emitted by fireworks in most cases contain toxic metals (lead, chromium, nickel) on their surface, organic pollutants such as polycyclic aromatic hydrocarbons, which are demonstrably identified as human carcinogens or teratogens, i.e. substances causing birth defects or even endocrine disruptors, substances disrupting hormonal balance, e.g. perchlorate. Data from so-called smog episodes document a significant increase in health problems followed by an increased number of hospitalizations and deaths within hours or days after the onset of the smog episode.

Inhalation of substances emitted during the combustion of fireworks can cause a wide range of breathing and other difficulties.

The toxic effects of fireworks are often seen as a one-off issue, but many of the chemicals contained in fireworks are difficult to degrade, such as heavy metals, and thus remain in the human body and the environment for a very long time. Contaminated water, soil and/or further accumulation in the food chain can contribute to further adverse effects.

The negative effects of the use of fireworks on animals are also important. Every year, the Central Commission for the Protection of Animals (an expert advisory body within the Ministry of Agriculture) calls for restrictions on fireworks and strongly draws attention to the negative effects associated with the firing of fireworks on farm animals, pets and wild animals. Animals react immediately to both the sound and visual effects that occur simultaneously in this activity. At the same time, it should be emphasized that animals perceive sound much more intensely than humans. Some fireworks achieve a volume of about 130 decibels (a helicopter about 100 decibels), which is already an unacceptable noise level for humans. However, some animals, such as dogs, can hear over longer distances than humans and over a greater frequency range, making their hearing significantly more sensitive than that of humans. In addition, animals can't explain the causes of the noise. Among the physiological reactions affected by fireworks can include increased heart rhythm, restlessness, anxiety, fear and stress, which often lead to panic and an escape response.

Livestock are frightened or injured by firecrackers and rockets landing on pastures. The animals are in shock, and as a result, they do not eat for several days and just lie there. The shock of explosions can cause a heart attack. In the case of horses, the most common manifestation is an attempt to escape due to herd panic. Approximately 25% of horses are injured each year as a direct result of being frightened by the sound and visual effects of fireworks, which certainly cannot be considered a rare occurrence.

Animal owners must prepare for the unrest, and avoid leaving the animals outdoors, even in their yard, during the expected large-scale use of fireworks. It is also necessary to adapt the time when one walks one's dog. What usually happens is that the animal whines or meows, trembles and tries to hide in a safe place. Sensitive animals panic and can, for example, jump through glass or otherwise injure themselves. An animal also shows fear by wetting itself, being aggressive and breathing irregularly. A physiological symptom may be an increased level of cortisol in the blood, the levels of which can then be compared with individual behavioural responses to sounds in different animal species. Cortisol levels in dogs reach a maximum about 15 minutes after the explosion, so the physical condition of the animal is greatly affected by the overall duration of pyrotechnic activity. During the New Year's Eve celebrations, out of desperation, many owners administer sedatives that can ultimately harm the animals.

Since fireworks are used mainly in the evening and at night, i.e. in the dark, in which especially many birds find it difficult to navigate, they then encounter various obstacles, such as trees, walls, windows or power lines.

In terms of wild animals, birds are most at risk, as in addition to visual stimuli, they also evidently sense the pressure wave of explosions. Acute stress can cause tachycardia, which causes death in birds and can even occur during flight. In winter, they take off from their wintering grounds and try to escape, during the nesting period they leave their nests or their young and often do not return. The same applies, of course, to mammals, who are stressed, run around in confusion and may be injured by panicked behaviour, including collisions with vehicles, often resulting in the death of the animal. In pregnant mammals, explosions can sometimes cause miscarriages.

Water Birds and fish are endangered because they can be poisoned by the remains of fireworks that fall on the water surface. Frightened fish leave their hiding places and are eaten by predators. Aquatic animals and birds can also die in winter as a result of excessive energy expenditure. Geese travel hundreds of kilometres on New Year's Eve, covering distances that would normally only be flown during migration.

#### Re 1) professional competence

The current regulation of professional competence cannot be considered sufficient, in particular in the light of Directive 2013/29/EU. This Directive defines in Article 3(6) a person with specialist knowledge (designation of a person with professional competence in the text of the Directive) as a person authorised by a Member State to handle or use fireworks of category F4, theatrical pyrotechnic articles of category T2 or other pyrotechnic articles of category P2 in its territory. Thus, under Directive 2013/29/EU, any person handling or using pyrotechnic articles of that category should be a professionally competent person. However, the current version of the Pyrotechnics Act requires professional competence only for certain activities, which are the purchase, sale, destruction, disposal and, in the case of categories F4 and T2, the performance of fireworks activities. For other activities with these categories of pyrotechnic articles, the Pyrotechnic Act does not require professional competence. However, as these are very dangerous pyrotechnic articles, it is desirable, in order to ensure safety and to comply with the requirements of Directive 2013/29/EU, also to stipulate that persons handling or using such articles have professional competence, since only this guarantees a high level of expertise and knowledge of such pyrotechnic articles.

The draft Act also extends professional competence to certain activities with regard to pyrotechnic articles of category F3. Hitherto, professional competence has only covered pyrotechnic articles (in the case fireworks) of category F4, which present a significant hazard that can be comparable to explosives and where it is necessary that only a person with professional competence handles such pyrotechnic articles. It is now proposed to introduce this requirement for category F3, too (but to a limited extent for individual activities).

#### Re 2) obtaining proof of professional competence

This will no longer be a certificate of professional competence, but rather proof of professional competence, more precisely authorisation to handle pyrotechnic articles of category F4, T2 or P2, for which proof of professional competence will be issued. As mentioned above, the procedure for obtaining a certificate of professional competence is very complicated and confusing for applicants. This procedure is also burdensome for the CMA, as the competent administrative authority, as the application procedure cannot be carried out without suspending this procedure.

The proposed amendment will ensure that an applicant for proof of professional competence will be able to undergo professional training before submitting an application to the CMA and only then apply for proof of professional competence. For applicants, such a procedure will be clearer and simpler. The advantage for the applicant will also be that if he/she fails the final examination (and then the re-examination), he/she will not be burdened with additional costs (except for a cost of CZK 3000 for holding the re-examination in case the applicant fails the first examination and will require its repetition), as is the case now, because according to the current version of the Pyrotechnics Act, every applicant obtaining a certificate of professional competence must also submit a medical opinion certifying his/her medical fitness together with the application and must also pay an administrative fee. Thus, under the current legislation, an applicant who fails the final examination and therefore does not obtain a certificate will also forfeit the costs incurred in obtaining a medical opinion and the administrative fee paid.

### Re 3) change of supervisory authority

The largest volume of obligations under the Pyrotechnics Act is now supervised by the CPHAA. This authority, established by Act No 156/2000 on the proofing of firearms and ammunition (hereinafter the 'Act on the Proofing of Firearms'), is located in Prague. Part of the CPHAA is a field office (the Supervision Department) located in Tábor. In addition to supervising obligations under the Pyrotechnics Act, the CPHAA also checks compliance with obligations under the Act on the Proofing of Firearms and also carries out checks under selected provisions of Act No 634/1992 on consumer protection, as amended. The CPHAA is a national authority.

The CPHAA is thus active not only in the field of pyrotechnic articles, but also in the field of firearms and ammunition. In the area of the supervision of obligations under the Pyrotechnics Act, a significant part of inspection activity is devoted to the sale of pyrotechnic products, especially in marketplaces, where sellers frequently breach obligations.

Given the size of the CPHAA and that of its 40 employees only 6 carry out inspection activities (which means not only inspection activities under the Pyrotechnics Act, but all inspection activities within the competence of the CPHAA), the performance of inspection cannot be as effective as would be desirable. The main problem is the large distance to individual inspection locations (many marketplaces are located near the border) and the small number of inspectors. The lack of persons performing inspections has adverse consequences on the actual performance of the inspections, as inspectors often encounter the fact that, in particular at marketplaces, they are often known to sellers (due to repeated inspections), and the recognition of inspectors leads to sellers who commit infringements of obligations under the Pyrotechnics Act taking temporary measures (e.g. removing pyrotechnic articles of category F4 from sales tables) when they become aware that inspection activities will be carried out. The small number of inspectors also does not allow inspection activities to be carried out to the extent that they would be needed in the case of pyrotechnic articles.

For these reasons, the amendment to the Pyrotechnics Act proposes that the CTIA performs inspection activities, which is much better equipped, especially in terms of personnel. The CTIA is already included among inspection authorities pursuant to § 55 of the Pyrotechnics Act and performs inspection activities to the extent specified in this Act. These include, in particular, compliance with age limits when making pyrotechnic articles available and storage obligations. The CTIA will thus not be included in the area of pyrotechnic articles as a new inspection body, and the scope of inspection will merely be extended. The main advantage is in particular greater staffing of the CTIA, which has regional inspectorates with defined territorial competence. This measure will achieve a situation where the performance of inspections will be much more efficient



and will increase the enforceability of compliance with the obligations under the Pyrotechnics Act, which should lead to a reduction in illegal sales of pyrotechnic products.

In addition to the CTIA, it is proposed that the supervisory activities currently carried out by the CPHAA should also be carried out by the authorities of the State Mining Administration, i.e. the CMA and the DMA. The State Mining Administration is also much better equipped for inspection activities than the CPHAA, especially with regard to its structure, which consists of both the CMA and the DMA, of which there are currently 7, and which exercise local competence only in a part of the Czech Republic. The existence of these regional workplaces, similarly as in the case of the CTIA, will make the inspection activities carried out so far throughout the entire country by the CPHAA through its office (and field office) more effective.

As regards the State Mining Administration, the inspection it performs will apply only to pyrotechnic articles of categories F3, F4, T2 and P2. Other pyrotechnic articles (i.e. categories F1, F2, T1 and P1) will be inspected by the CTIA. The Pyrotechnics Act does not constitute a new competence for the DMA. As in the case of the CTIA, the DMA already acts as an inspection authority, but only in the area of fireworks activity (not in the area of pyrotechnic articles themselves found in the supply chain). In the case of the DMA, this is also an extension of the current scope of supervision in the Pyrotechnics Act.

#### Re 4) corrections in connection with the correction of the Czech version of Directive 2013/29/EU

The corrigendum to Directive 2013/29/EU, specifically its Czech language version, has modified certain terms appearing in that directive. Corrigendum to these terms was made mainly because of the need to comply with the text of harmonised standards laying down technical requirements for pyrotechnic articles. In order to maintain uniform terminology in the relevant technical standards, Directive 2013/29/EU and the Pyrotechnics Act, it is necessary to harmonise those terms.

#### Re 5) authority of municipalities to issue by-laws

Although many municipalities are already using by-laws to regulate the use of pyrotechnics in their territory, their abilities are still limited to some extent. By means of by-laws issued within the scope of § 10(a) and (c) of the Act on Municipalities, taking into account the case-law of the Constitutional Court [e.g. Pl. ÚS 35/06 (Kořenov)] as a rule, general obligations should not be laid down (e.g. prohibitions laid down for the entire municipality), or prohibitions should be laid down with a view to safeguarding local matters of public order to the least restrictive extent.

Although in practice the Ministry of the Interior, as part of its supervision, approved, for example a by-law of the municipality of Hřensko, in which the use of fireworks was prohibited throughout the municipality (By-law of the municipality of Hřensko No 1/2023), this was an isolated case, justified by local specifics (in particular the effects of the devastating fire in 2022 and the special nature of the municipality). In any case, however, in the light of the case-law of the Constitutional Court, municipalities are obliged to defend the chosen solution before the Ministry of the Interior (and, ultimately, the Constitutional Court) and to demonstrate that the general prohibition is proportionate to the restriction of citizens' rights and is, in the light of local conditions and specificities, truly necessary from the point of view of the protection of health, public order or the environment.

It is therefore proposed to make use of the possibility provided for in § 10(d) of the Municipalities Act to expressly enshrine the competence of municipalities to issue by-laws, which will automatically allow them to prohibit the use of pyrotechnic articles across the board (with certain exceptions). The municipality will now be able to introduce a blanket prohibition on its

territory on the basis of its political decision. In view of the above-mentioned general negative effects of the use of pyrotechnic articles, the prohibition will be entirely legitimate and always proportionate in view of the importance of protected public property and fundamental rights. With this step, the legislator explicitly transfers a possible political decision on a total prohibition of the use of pyrotechnic articles (with specified exceptions) to individual municipalities, which will therefore no longer have to defend blanket prohibitions on their territory in the future.

#### Re 6) other adjustments

The Pyrotechnics Act provides for further modifications of individual regulation to ensure a more favourable environment in the field of pyrotechnic products. In particular, it concerns the regulation of the sale of pyrotechnic articles by means of distance communication, the prohibition of the sale of pyrotechnic articles in certain places such as markets, or the establishment of protective zones for certain structures.

Protection zones are established with regard to protection against noise and flashes of the most vulnerable population groups. At the same time, facilities where animals are cared for are also protected. Buildings, facilities and structures are defined using terms already contained in the relevant legislation, so that it is sufficiently clear to persons using pyrotechnics, but also to supervisory authorities, where it is possible to use pyrotechnics and where, on the contrary, it is prohibited.

These are measures that are not yet regulated by the Pyrotechnics Act or are insufficiently regulated.

Further individual amendments to the Pyrotechnics Act are required. These are small-scale amendments, where some provisions have been shown to be unclear or not fully in line with Directive 2013/29/EU and Directive 2014/58/EU. There are also some provisions in the Pyrotechnics Act that are not fully in line with other legislation and therefore need to be corrected. It is proposed to add definitions of infractions for those obligations for which no corresponding infractions has been stipulated in the Act.

#### Re 7) amendment of other acts

##### Administrative Fees Act

The amendment to the Pyrotechnics Act introduces new administrative fees, namely the fee associated with participation in professional training, which is a prerequisite for obtaining proof of professional competence, and fees for the performance of certain professional activities in relation to pyrotechnic articles. The fee for professional training is already laid down in the Pyrotechnics Act, but stipulation of this fee in the Administrative Fees Act is seen as desirable. The amendment to the Pyrotechnics Act also introduces some new administrative fees for professional activities carried out by the CPHAA that are missing from the current legislation (although they were stipulated in the past). The costs of these activities, which were requested (mostly) by private entities, are thus still borne by the State. Now, those costs should always be borne by those who request the performance of such an activity.

##### Act on Market Surveillance of Products

This Act regulates, among other things, how supervisory authorities proceed in relation to products for which requirements are stipulated by EU legislation. Given that pyrotechnic articles, which are regulated in particular by Directive 2013/29/EU, are also such products, this Act also

applies to these products. The Act then lists in its annex the supervisory authorities acting under the Act, including the relevant EU legislation relating to the products supervised by the supervisory authority, and the corresponding national legislation. The CMA will be the supervisory authority that in the area of pyrotechnic articles will check the requirements laid down for pyrotechnic articles of categories F4, T2 and P2, which are regulated by Directive 2013/29/EU; it is necessary to include it as a supervisory authority in the annex to that Act, so that it can proceed with this supervision under the Act on Market Surveillance of Products. As regards the DMAs, which will also supervise pyrotechnic articles of categories F4, T2 and P2, their supervision is limited to national requirements not covered by the Act on Market Surveillance of Products, which is also why they (DMAs) are not set out in the Annex.

### **C) ASSESSMENT OF COMPLIANCE OF THE PROPOSED LEGISLATION WITH EUROPEAN UNION LEGISLATION, EUROPEAN UNION CASE LAW, AND THE GENERAL PRINCIPLES OF EUROPEAN UNION LAW**

The draft Act is in line with Directive 2013/29/EU and Directive 2014/58/EU. Directive 2013/29/EU requires pyrotechnic articles of categories F4, T2 and P2 to be handled and used only by persons with professional competence. It is up to each Member State to determine who qualifies as professionally competent and the way in which professional competence is acquired. The amendments to the Pyrotechnics Act that affect the transposition of Directives 2013/29/EU and 2014/58/EU are then in line with those Directives.

The draft Act is also in line with Article 4(2) of Directive 2013/29/EU, according to which this Directive

does not rule out Member States adopting measures to prohibit or restrict the possession, use or sale to the general public of fireworks of categories F2 and F3, theatrical pyrotechnic articles and other pyrotechnic articles that are justified on grounds of public order, public safety, the protection of health and safety of consumers or the protection of the environment.

### **E) ASSESSMENT OF COMPLIANCE OF THE PROPOSED LEGISLATION WITH INTERNATIONAL TREATIES BINDING ON THE CZECH REPUBLIC**

The present draft Act is fully in line with the international treaties by which the Czech Republic is bound, including the Treaty on the Functioning of the European Union and the Treaty on European Union, as well as with generally accepted principles of international law.

### **F) EXPECTED ECONOMIC AND FINANCIAL IMPACT OF THE DRAFT LEGISLATION ON THE STATE BUDGET, OTHER PUBLIC BUDGETS, THE BUSINESS ENVIRONMENT IN THE CZECH REPUBLIC, SOCIAL IMPACTS, INCLUDING IMPACTS ON SPECIFIC POPULATION GROUPS, IN PARTICULAR SOCIALLY DISADVANTAGED PERSONS, PERSONS WITH DISABILITIES AND ETHNIC MINORITIES AND ENVIRONMENTAL IMPACT**

The draft Act will not have a negative impact on the state budget. The draft Act will not have increased demands on the state budget or in terms of the transfer of supervisory activities from the CPHAA to the CTIA. However, a positive impact on the state budget can be expected in relation to the activities that are now funded from the state budget.

This impact is negligible in terms of revenue for the state budget. These are payments that arise on the basis of an applicant's request that up to now had not been subject to fees and needed to be paid from the state budget. They will now be paid by applicants. The amendment does not

introduce any new activities, but only fees for existing actions by applicants that have hitherto been borne by the state. This involves:

- carrying out professional activities related to pyrotechnic articles and equipment for their use (with an expected fee of CZK 10,000).

Given the experience so far with this newly charged action, which in previous years took place only in numbers on the order of single digits (3 actions in 2017 and 1 action in 2019), it cannot be assumed that income to the state budget should exceed CZK 50,000 per calendar year .

The draft Act also newly envisages that participants in professional training who fail the final examination will have to pay CZK 3000 for re-examination (the examination can be repeated at most two times). This income is merely hypothetical, given that to date no applicant has had to repeat this examination. Those costs involve, in particular, the costs of purchasing pyrotechnic articles for the practical part of the test. Currently, participants in professional training do not bear these costs (they only bear the costs associated with providing vocational training in the amount of CZK 10,000). The draft Act also provides for the collection of remuneration for professional activities related to pyrotechnic articles. The same provision was already in the Act on the Proofing of Firearms and Ammunition before the Pyrotechnics Act came into effect, when the area of pyrotechnic articles was regulated by this Act. A provision allowing the CPHAA to collect remuneration has not been included in the Pyrotechnics Act and these costs are still borne by the State.

The impact on the state budget is expected in particular in the context of ensuring oversight. The CTIA will need to add eight new job positions, which represents an amount of CZK 6,299,088 per year. It is also necessary to take into account the costs related to the need for storage and disposal of pyrotechnics, which are estimated at CZK 1,350,000 per year. The State Mining Administration (CMA/DMA) will need add 15 job positions, which represents approximately CZK 17.6 million annually. Expected costs related to the storage and disposal of pyrotechnics are estimated at approximately CZK 3,000,000 per year. The CPHAA will need to increase the number of job positions by one instructor's position and also funds for providing/performing training, for a total of about CZK 1,000,000 per year.

For more on this, see the RIA.

An impact on businesses can be expected if they require the CPHAA to carry out professional activities related to pyrotechnic articles. Furthermore, increased interest in professional training to obtain proof of professional competence can be expected in the context of the extension of activities requiring professional competence (any activity in which pyrotechnic articles of categories F4, T2 or P2 are handled or used). The participation of an applicant is subject to a payment of CZK 10,000 (CZK 3000 for a re-examination, if needed). Other financial impacts are only negligible, e.g. under the draft Act businesses will keep a list of persons with professional competence to whom they have supplied a pyrotechnic article of category F4, T2 or P2 for the needs of a supervisory authority.

Social impacts, including on specific groups of the population, in particular the underprivileged, persons with disabilities and national minorities, and environmental impacts are not expected.

## **G) ASSESSMENT OF THE CURRENT SITUATION AND IMPACT OF THE PROPOSED POLICY IN RELATION TO THE PROHIBITION OF DISCRIMINATION AND IN RELATION TO GENDER EQUALITY**

The draft Act, like the current legislation, does not create any discrepancies contrary to the prohibition of discrimination.

The impact on gender equality was evaluated according to the 'Methodology of evaluation of impacts on gender equality for materials submitted to the Government of the Czech Republic' ([http://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt\\_Optimalizace/Metodika-PO-OPONENTURE.pdf](http://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt_Optimalizace/Metodika-PO-OPONENTURE.pdf)).

The draft legislation is a technical regulation dealing exclusively with the issue of making products available on the market and related activities. In accordance with point 3.3 of the Methodology, the submitter therefore notes that the document does not relate to the status of individuals and does not affect gender equality.

#### **H) ASSESSMENT OF THE IMPACTS OF THE PROPOSED POLICY IN RELATION TO THE PROTECTION OF PRIVACY AND PERSONAL DATA**

The draft legislation of the Criminal Code does not directly affect the protection of privacy, and in the case of the handling of personal data, the existing legislation on the protection of personal data will be respected.

#### **I) ASSESSMENT OF CORRUPTION RISKS**

Corruption risks were assessed in accordance with CIA methodology. – Corruption Impact Assessment ([https://korupce.cz/wp-content/uploads/2018/12/Metodika-hodnoceni-korupcnich-rizik-\\_CIA\\_.pdf](https://korupce.cz/wp-content/uploads/2018/12/Metodika-hodnoceni-korupcnich-rizik-_CIA_.pdf)).

The set of regulated relationships and the scope of the powers of state authorities fully correspond to the existing legislation. The competent public authorities, i.e. the CTIA (supervisory authority) and the OSMT (notifying authority), will be able to effectively supervise and enforce compliance with the new regulation using the same procedures as the current regulation. Both institutions have in place sufficiently high-quality internal control mechanisms for decision-making, including the designation of a specific responsible person. In procedural matters, including appeals against decisions, the general rules of the Administrative Code apply.

The amendment to the Criminal Code and the Pyrotechnics Act does not increase corruption risks in any way compared to the existing legislation, nor does it entail corruption risks.

The draft does not affect the availability of information pursuant to Act No 106/1999 on free access to information, as amended. Furthermore, the draft does not contradict the requirements of transparency and openness of data.

#### **J) ASSESSMENT OF IMPACTS ON STATE SECURITY OR DEFENCE**

The draft amendment of the Pyrotechnics Act brings positive effects on the security and defence of the Czech Republic, as it makes it possible to sanction more effectively than hitherto the unauthorized acquisition or storage of pyrotechnic articles, especially category F4, whose destructive properties are similar to the destructive properties of explosives and for which there is therefore an increased risk of their misuse (organized crime, activities of extremist movements).

## **K) ASSESSMENT OF THE COMPLIANCE OF THE PROPOSED LEGISLATION WITH THE PRINCIPLES OF DIGITALLY FRIENDLY LEGISLATION**

The draft legislation does not newly regulate the digital implementation of the agenda in question; it is an amendment to the Pyrotechnics Act, which responds to Directive 2013/29/EU and Directive 2014/58/EU, thereby fulfilling the obligations arising in particular from Article 288 of the Treaty on the Functioning of the European Union.

The draft legislation has thus been evaluated in the light of the following principles:

### ***1. Building digital by default as a matter of priority***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

The implementation of this principle can generally be found in the Pyrotechnics Act, which is generally linked, from the outset, by its wording to established supervisory authorities that have, on the basis of their activities, already functional digital systems in place.

These supervisory authorities are, inter alia, the CTIA, which has already stabilised systems in place on its website, and the CMA, which also has already functional digitised systems in place, including interactive forms created for the purposes of the Pyrotechnics Act.

Furthermore, the CTIA lists open data on its website, i.e. informs the public of risky websites – an overview of websites that are risky from the CTIA’s point of view (these websites are updated as necessary, usually several times a week). Informs about the checks carried out in the form of an overview of basic information on all inspections carried out by CTIA inspectors, which is updated once a year. On its website, the CTIA digitally informs about all final fines imposed on the basis of the above-mentioned CTIA inspections, which it also updates.

The CTIA also publishes on its website an overview of the acts whose compliance was subject to inspection, which it also updates once a year.

Digitally, through its website, the CTIA publishes a list of products whose sale was prohibited on the basis of inspections. For pyrotechnic articles, the SAFETY GATE digital system – formerly RAPEX – and the ICSMS digital system were already operational before this Act came into effect.

#### **SAFETY GATE WARNING SYSTEM (formerly RAPEX)**

The Safety Gate is the European Union's rapid alert information system for dangerous non-food consumer products (with the exception of pharmaceutical products). It serves to provide alerts of both direct and indirect risks to the health or safety of consumers who might come into contact with dangerous products.

The aim of the Safety Gate is to ensure the rapid exchange of information between the European Commission, the EU Member States, Iceland, Liechtenstein and Norway on measures taken by them to prevent, restrict or condition the placing on the market or use of products that may pose the above risks. Alerts submitted to the Safety Gate include, in addition to enforcement measures imposed by competent supervisory authorities, voluntary measures by manufacturers and distributors. The contact point of the Safety Gate alert system for the Czech Republic vis-à-vis the European Commission is the Ministry of Industry and Trade (hereinafter the ‘MIT’).

The legal basis of the system is given Directive 2001/95/EC of the European Parliament and of the Council on general product safety a Commission Implementing Decision (EU) 2019/417. It is

implemented into the legal environment of the Czech Republic by Act No. 102/2001 on general product safety, as amended, and Government Regulation No 396/2004 on procedures, content and form of information on the presence of dangerous non-food products, as amended by Government Regulation No 175/2010.

The system includes a public part intended for consumers, economic operators and other users and is made available under the name Safety Gate (Rapid Alert System for Dangerous Non-Food Products). Here, updated information on identified dangerous non-food products and the potential risk they may pose to end-users is publicly available. Furthermore, it concentrates information on activities developed on a pan-European scale to eliminate the occurrence of potentially dangerous products in the EU single market, advice and information for consumers and tools usable by businesses in the area of reporting dangerous products, take-back of dangerous products already used by consumers, issues of on-line sales, etc.

The staff of the national supervisory authorities, the customs administration and the EU administration utilise non-public access to the Safety Gate alert system, which is designed to enter and exchange information on dangerous products between the organisations concerned.

#### ICSMS INFORMATION SYSTEM

The ICSMS (Information and Communication System on Market Surveillance) is used mainly by supervisory authorities for the rapid and efficient exchange of information on inspected products. It contains a public section intended for consumers, economic operators and other users, who can see basic information about products and their non-conformity with the relevant European or national legal standards applicable to each product area. The non-public part of the system, which is intended for national supervisory authorities, customs authorities and the EU administration, provides further information regarding supervision of products included in the ICSMS. The national administrator of the ICSMS in the Czech Republic is the Ministry of Industry and Trade. The ICSMS is currently gaining in importance due to its gradual direct connection with the Safety Gate alert system and the sharing of data on products falling under all product directives and regulations of the European Union and national legislation. At the same time, the ICSMS is used to notify and provide information on measures under the EU Safeguard Clauses according to individual sectoral regulations and directives of the European Union. Information about the ICSMS and the search for products included in it or the possibility to search for the supervisory authority competent for the product area and the state/administrative district can be found at ICSMS - European Commission ([europa.eu](http://europa.eu)).

Other digital systems are listed on the CTIA website.

CMA has a link to pyrotechnic articles on its website with links to the forms listed in the Pyrotechnics Act, as well as interactive forms in the form of an application for obtaining a document of professional competence for handling pyrotechnic articles.

None of these systems were introduced by this amendment to the Pyrotechnics Act.

#### ***2. Maximum repeatability and re-usability of data and services (only once principle)***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

### ***3. Building accessible and usable services for all, including persons with disabilities (the principle of governance accessibility)***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

The systems used must comply, as public administration systems, with the requirements of Act No 99/2019 on the accessibility of websites and mobile applications and amending Act No 365/2000 on public administration information systems and amending certain other acts, as amended. This amendment builds on existing systems.

### ***4. Shared public administration services***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

### ***5. Consolidation and interconnection of public administration information systems***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

With regard to the supervisory authorities regulated by the Act, the use of the systems of these supervisory authorities is presumed.

### ***6. International interoperability — building services that are interconnectable and usable in the European space***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

The international element is contained in the mutual information obligation introduced by the Pyrotechnics Act.

### ***7. Protection of personal data to the extent that quality services are possible (GDPR principle)***

The principle has been respected in the preparation of the legislation. It is simply the extension of an existing system.

### ***8. Openness and transparency including open data and services (open government principle)***

The principle is not affected by the draft legislation. It is simply the extension of an existing system.

### ***9. Technological neutrality***

Implementation of the amendment to the Act (more precisely, its technical implementation) meets the definition of ‘universal service’ – there is no introduction of negative regulatory effects or preference for a particular technological solution. Access to data will be technologically independent and neutral, including independence of a specific platform.



## ***10. User-friendliness***

The draft Act complies with the above principle.

## **II) Special part**

### **Re: Article I**

#### Re: points 1 and 2

##### § 1(2) and (3)

The Pyrotechnics Act does not hitherto regulate the obligations of natural persons, with the exception of natural persons with professional competence, in relation to the handling of pyrotechnic articles of category F4, T2 or P2. Professional competence is required for pyrotechnic articles of these categories, as they are qualified as very dangerous and therefore should not be normally accessible to non-professionals (the requirement of professional competence will now also apply to category F3). However, the Pyrotechnics Act, as amended, does not impose any obligations on natural persons without professional competence as regards the handling of such pyrotechnic articles. Therefore, if such a person is currently handling a pyrotechnic article of category F4, T2 or P2, he is not acting contrary to the Pyrotechnics Act. It is now proposed to establish infractions for natural persons who are not professionally qualified persons and yet handle pyrotechnic articles of category F4, T2 or P2. The amendment to § 1(2) thus consists of stipulating that the Pyrotechnics Act also regulates the rights and obligations of persons other than only manufacturers, importers and distributors of pyrotechnic articles and persons with professional competence.

It is stipulated that this Act does not apply to pyrotechnic articles regulated by other legislation. Such products not covered by this Act include, for example, pyrotechnic articles used by the armed forces, marine equipment for use in the aerospace industry, caps intended for toys, ammunition, munitions, etc.

#### Re: Point 3

The original provision of § 2 is deleted as the scope is fully defined in § 1.

#### Re: Point 4

##### § 3(e)

It is specified that only a natural person who has been granted authorisation to handle pyrotechnic articles of categories P2 or T2 and F4 may be a person with professional competence. This authorisation shall be evidenced by proof of professional competence. In relation to this amendment § 36 is amended, where the issue of professional competence is dealt with. According to the existing legislation, a corporate entity may also be considered professionally competent, which, however, causes considerable difficulties, as professional competence constitutes an official confirmation that a natural person possesses the necessary skills and at the same time meets other substantive requirements. Thus, such professional competence can always be linked only to a specific natural person. Because the definition in § 3(e) already stipulates that only a natural person may be such a person, this eliminates the need to address this issue in § 36. The fact that this document is issued by the CMA is also eliminated from the definition, as this is regulated in § 37.

#### Re: points 5, 6 and 7

##### § 3(h), (i) and (j)

The definitions of economic operators involved in the supply chain of pyrotechnic articles now state that they are businesses. Hitherto, it has been stated that it is a natural person or corporate entity operating a business. The term ‘business’ seems more appropriate for legislation than the term ‘natural person or corporate entity operating a business’. It is therefore a matter of defining the same entity. The other amendments set out in these provisions are then linked to the amendment described above.

Re: Point 8

§ 3(t)

The definition of a stockroom is amended to stipulated that a stockroom is a storage area for pyrotechnic articles that is structurally separate from the sales room. The current definition states that a stockroom is a warehouse structurally separate from a sales room. By stating in the definition that a stockroom is a warehouse, there may be a misinterpretation that the requirements laid down by the Act for warehouses also apply to stockrooms (which is, however, an incorrect interpretation, since the requirements for warehouses are not intended to apply to stockrooms).

Re: Point 9

§ 3(u) and (v)

The definition of fireworks activity in § 33(1) of the current version of the Pyrotechnics Act is being moved. It is now set out in § 3. The definition states that fireworks activity involves the use of pyrotechnic articles of category F4 or T2. If, in the context of fireworks activity, pyrotechnic articles of other categories (e.g. F2 or F3) are used, this is still fireworks activity within the meaning of this definition, since even a single product in category F4 or T2 is sufficient to constitute fireworks activity (even if this single pyrotechnic article is to be fired).

The definition of fireworks in § 32(1) of the current version of the Pyrotechnics Act is being moved. It is now set out in § 3. In order to be fireworks, several conditions must be met at the same time, namely that pyrotechnic articles of category F2, F3 or T1 (including combination thereof) are fired, these pyrotechnic articles contain more than 10 kg net explosive content (i.e. it is not the weight of the products themselves), and this firing takes place simultaneously or in sequence. The last condition was modified, where the current wording of the Pyrotechnics Act states that the firing is simultaneous or over a short time span. In both cases, there are vague legal concepts, where the competent administrative authority must interpret them and consider whether the facts may be subsumed under that concept. However, it can be assumed that the vagueness of the term ‘consecutive firing’ is less vague than that of the term ‘firing over a short time span’, as stated in the currently applicable regulation of the Pyrotechnics Act.

The definition of the term ‘certificate’ in the currently applicable version of the Pyrotechnics Act referred to in § 3(v) is deleted and a new legislative abbreviation ‘certificate’ is introduced in § 9(3), meaning certificates and attestations referred to in § 9(2). This rectifies the current shortcoming in which the term ‘certificate’ is defined in the definitions in § 3, but subsequently is not used in § 9, where reference is made to individual certificates and attestations.

Re: Point 10

§ 3(w)

The definition of the safety perimeter in § 33(2) of the current version of the Pyrotechnics Act has been moved. This provision contains both the definition of the safety perimeter (first sentence) and how it is stipulated (second sentence). Only the first sentence containing the definition of the safety perimeter as such (which remains in the same wording) has been moved to § 3. The definition of the safety perimeter is then a matter of provisions relating to fireworks.

Re: point 11

§ 4(1)

A corrigendum to Directive 2013/29/EU was published in Official Journal of the European Union L 38/42 of 10 February 2018, according to which, in the first sentence of the first subparagraph of Article 6(1) of that directive, the words ‘degree of hazard’ are replaced by the words ‘level of hazard’. This article of the Directive is transposed into Czech law by § 4 of the Pyrotechnics Act.

For this reason, it is necessary to also replace these words in the aforementioned provision of the Pyrotechnics Act.

#### Re points 12, 13 and 14

##### § 5(1)

In the current version of the Pyrotechnics Act, an economic operator or a person with professional competence may make pyrotechnic articles available to persons who have reached the relevant age. Such wording does not fully correspond to Directive 2013/29/EU, which refers to supply. Also, the concept of making available is not defined in any way in the Pyrotechnics Act, while, on the other hand, the concept of ‘making available on the market’ is defined.

According to its title, § 5 is intended to address the issue of age limits and other restrictions. However, here the current wording of the Pyrotechnics Act addresses the issue of which entities may make pyrotechnic articles available by stipulating that economic operators and persons with professional competence may do so. Moreover, it can be inferred from this provision that these entities may do so only in respect of persons who have reached that age, which means, however, that other entities may also make them available to persons who have not reached that age. It is therefore proposed to merely stipulate that pyrotechnic articles may be made available on the market to a natural person who has reached a certain age. However, this does not apply in the case of pyrotechnic articles of categories F3, F4, T2 and P2, which may be supplied only to persons with professional qualifications [the supply of such pyrotechnic articles is dealt with separately in § 25(1)]. Reaching a certain age is only relevant for pyrotechnic articles of categories F1, F2, T1 and P1. The question of which operators may supply pyrotechnic articles on the market then arises from other provisions of the Pyrotechnics Act (in particular § 16).

The deletion of the provision in the current version of paragraph (2) is also proposed, as there is a similar problem as in paragraph (1). Age restrictions are decisive only in the case of natural persons, so it is not necessary to address the issue of age when pyrotechnic articles are made available on the market (or made available, as the current version of the Pyrotechnics Act provides) to a corporate entity. In this case, the seller should assess the age of the responsible natural person pursuant to paragraph (1).

The provision in the current version of paragraph (3) is deleted in connection with the transfer of the conditions for the treatment of pyrotechnic articles of category F4, T2 or P2 to Title VI, which will comprehensively regulate the issue of the handling of such pyrotechnic articles.

##### § 5(2)

Paragraph (2) [in the currently version it is paragraph (4)] stipulates that pyrotechnic articles of category P1 for use in a vehicle, including airbags and seat belt pretensioners, shall not be made available to the general public unless such pyrotechnic articles are incorporated into a vehicle or a removable part of a vehicle.

Instead of availability, the draft wording uses the legally defined notion of making available on the market. Furthermore, instead of a negative definition of to whom these pyrotechnic articles may not be made available, or to whom they may not be supplied, i.e. to the general public, there is now a new positive definition of to whom they may be supplied, namely to economic operators, and also to businesses for the purpose of their incorporation into a vehicle or a removable part of a vehicle. These pyrotechnic articles present considerable hazards and require professional handling. Therefore, they must not be available to the general public. The general public is, however, a rather vague concept, so a positive definition has been made, which would directly stipulate to whom they can be supplied. Those entities are the economic operators who handle those products in the supply chain and other businesses who incorporate them into a vehicle or a removable part

of a vehicle. In this case, it is no longer a pyrotechnic article and can be made available to anyone (unless a special piece of legislation stipulates otherwise). This positive delimitation thus fulfils the original negative delimitation so that these pyrotechnic articles are not accessible to the general public.

Re: point 15

§ 8(1)

The obligation for the manufacturer to submit a pyrotechnic article to a notified body before it is placed on the market is stipulated only in cases where the relevant conformity assessment procedure so requires. If the relevant conformity assessment procedure does not require the involvement of a third entity (a notified entity), the manufacturer shall not submit the pyrotechnic article to that entity. The individual conformity assessment procedures are regulated by Government Regulation No 208/2015 on technical requirements for pyrotechnic articles and their placing on the market.

Re: Point 16

§ 8(2)

Subparagraphs (a) and (b) clarify the information given in the written request for assessment. The current version of § 8(2)(a) stipulates that the application must always contain the business name and address of the registered office or the name, surname and residence address of the manufacturer or importer, and subparagraph (b) stipulates that the place of permanent residence or another address for delivery must also be indicated. The amendment to these provisions was based on the assumption that a manufacturer can only be a legal person or a sole trader, i.e. the required data should be the business name and address of the manufacturer's registered office [subparagraph (a)] or, if it is not a business name, the first name, surname, place of permanent residence, or another address for delivery [subparagraph (a) and (b)]. Because a manufacturer can always only be a corporate entity or sole trader, it is sufficient to state that the name (in the case of a sole trader who is not registered in the Commercial Register) or business name [subparagraph (a)] and the address of the registered office [which is provided both for corporate entities and in accordance with § 429 of Act No 89/2012, the Civil Code, as amended (hereinafter the 'Civil Code'), for sole traders as well] is provided. The information regarding importers is deleted as unnecessary.

Re: Point 17

§ 9(3)

The definition of the term 'certificate' in the currently applicable version of the Pyrotechnics Act referred to in § 3(v) is deleted and a new legislative abbreviation 'certificate' is introduced in § 9(3), meaning certificates and attestations referred to in § 9(2). This rectifies the current shortcoming in which the term 'certificate' is defined in the definitions in § 3, but subsequently is not used in § 9, where reference is made to individual certificates and attestations.

Re: point 18

§ 10(3)

The current version of the Act stipulates that the manufacturer shall translate the EU declaration of conformity into the official language required by the Member State of the Union in which the pyrotechnic article is placed on the market. Article 18(2) of Directive 2013/29/EU provides that the EU declaration of conformity is to be translated into the language or languages required by the Member State in which the pyrotechnic article is placed or made available on the market. Because the scope of the Pyrotechnics Act is in the Czech Republic, it is necessary to determine what language is required if a pyrotechnic article is placed or supplied on the market in the Czech Republic, and this language is the Czech language. Therefore, if a pyrotechnic article is made available on the market in the Czech Republic, the economic operator who makes such a product

available on the market in the Czech Republic shall arrange for the declaration of conformity to be translated into Czech. The declaration of conformity is kept by the manufacturer, who is not obliged to make it available to other economic operators (except in the case of imports of pyrotechnic articles from outside the EU, where the declaration of conformity should be in the possession of the importer), hence the distributor cannot translate the declaration of conformity if he does not have it. Therefore, it is stated that such an economic operator will ensure such a translation, which can be understood as translating it itself (if it has such ability) or shall inform the manufacturer or the importer, as the case may be, of the need to translate the declaration of conformity.

Re: point 19

§ 11(3)

The current version stipulates the obligation for a notified body to keep a register of pyrotechnic articles for 10 years from the date on which the pyrotechnic article certified by that notified entity is placed on the market (unless the expiry date is later). However, this cannot be ascertained by the notified entity as placing on the market is the manufacturer's (importer's) affair. So the notified entity can fulfil its statutory obligation, it would have to be notified by the manufacturer (importer) when it placed the pyrotechnic article on the market, notwithstanding that the placing on the market concerns each individual product, which means that the obligation to keep this register, as provided for in the Pyrotechnic Act now, for a period of ten years would apply from the date of placing on the market of the last pyrotechnic article for which this certificate was granted. This provision does not fully correspond to the wording of Directive 2014/58/EU, which is transposed by that provision. Article 2(1) of Directive 2014/58/EU provides that: *'The register of pyrotechnic articles shall contain at least the product information set out in the Annex. Such data shall be kept for a period of at least 10 years from the date on which the notified bodies issued the certificates or certificates or approvals referred to in the first subparagraph.'* For these reasons, an amendment to § 11(3) is proposed, which corresponds to Directive 2014/58/EU, according to which the notified body will be obliged to retain data for 10 years from the date on which the pyrotechnic articles were granted a certificate [definition of a certificate in § 3(v) of the Pyrotechnics Act].

In § 11(3), the words 'in a manner allowing remote access' are replaced by the words 'on its website'. Those provisions require notified entities to make certain information publicly available in a manner allowing remote access. This amendment will thus precisely define the place of publication, i.e. on the website of the notified entity concerned. If the words 'allowing remote access' were used, such information could effectively be published anywhere on the internet.

Re: points 20, 21, 22 and 23

§ 12(3) to (7)

Those provisions stipulate obligations for economic operators, namely manufacturers and importers, stating that they are manufacturers or importers of pyrotechnic articles. However, the fact that it is a manufacturer or importer of pyrotechnic articles does not need to be mentioned, as this is already clear from the definitions of manufacturer and importer. Nor does the subsequent text of the Act state that it is a manufacturer or importer of pyrotechnic articles. Therefore, paragraph (3) now only states that it is a manufacturer or importer (without mentioning that it is a manufacturer or importer of pyrotechnic articles).

§ 12(4) and (5) lays down the obligation to hand over records of the registration numbers of pyrotechnic articles manufactured by a manufacturer or imported by an importer. The current version of § 12(4)(b) and (5) states that these records are transferred to the notified entity pursuant to § 42(1). However, § 42(1) refers to the OSMT as the notifying authority, i.e. not to the notified entity. This is therefore an evident inaccuracy in the reference in § 12(4) and (5). Nevertheless,

neither the notified entity nor the notifying authority are relevant entities that should have such records in the event of the dissolution of a manufacturer or importer. The relevant entity is the CTIA and, in the case of pyrotechnic articles of category F3, F4, T2 or P2, the CMA, as supervisory authorities, which in such a case should have information on the products that are or could still be on the market after this dissolution. What is relevant to the transmission of those documents is the dissolution of the entity itself, that is to say, the manufacturer or importer, and not merely the lapse of the right to act as a manufacturer or importer, since, although an entity ceases to have the right to act as a manufacturer or importer, that entity is still the manufacturer or importer of products already manufactured or imported by it and on the market. If the manufacturer or importer does not cease to exist, there is no reason for them to hand over these records.

The new Act stipulates in paragraph (4) the obligation of the manufacturer or importer to hand over the documents referred to in paragraph (3) in the event of dissolution. The entity to which these documents are to be handed over depends on whether or not that manufacturer or importer will have a legal successor and, if so, whether that legal successor continues in the line of business. If the manufacturer or importer has a legal successor who continues the line of business, it shall transmit these documents to that legal successor. However, if it does not have a legal successor or legal successor, but does not continue in the business, it will hand over these documents to the CTIA, and in the case of pyrotechnic products of category F3, F4, T2, P2, CMA.

If a manufacturer or importer has been transformed pursuant to paragraph (5) without dissolution, it shall hand these records over to the successor corporate entity. Transformation is defined as transformation pursuant to § 174 of the Civil Code and Act No 125/2008, the Act on Transformations of Commercial Companies and Cooperatives, as amended.

In the current version, the word ‘transfers’ is used in paragraph (4) in connection with those records, which is a legally incorrect term, since it is not a transfer. It has therefore been replaced by the term ‘hands over’.

Pursuant to paragraph (7), if the records pursuant to paragraph (4) (for example, due to the death of an entrepreneur) or paragraph (5) are not handed over, the person to whom these records become available in connection with the dissolution of the manufacturer or importer shall hand over these records to the legal successor who continues in the line of business. In the absence of such a legal successor, this person shall hand these records over to the CTIA or, in the case of pyrotechnic articles of category F3, F4, T2 or P2, the CMA. Regardless of whether the person in possession of those records hands them over to the successor in title or to the supervisory authority, they must do so within two months of the date on which those records came into their possession.

In the case of pyrotechnic articles of category F3, F4, T2 or P2, the obligation of the manufacturer or importer pursuant to paragraph (6) to provide the information specified in the records pursuant to paragraph (3) is extended to also include the CMA. The manufacturer will thus always be obliged to provide this information to the notified entity and, depending on whether or not the pyrotechnic articles are of category F3, F4, T2 or P2, to the CTIA or the CMA.

#### Re: points 24 and 26

##### § 13

The current § 13(1) is deleted, in light of the fact that the obligation of the manufacturer to label a pyrotechnic article in the specified manner is already set out in § 19(4). As a consequence of the deletion of paragraph (1), the other paragraphs need to be renumbered and in the paragraph

renumbered as paragraph (2) [formerly paragraph (3)] the reference to the current paragraph (1) [formerly paragraph (2)] needs to be changed.

Re: point 25

§ 13(1)(b)

A corrigendum to Directive 2013/29/EU was published in Official Journal of the European Union L 38/42 of 10 February 2018, according to which, in Article 10(2) of that directive, the word 'kind' is replaced by the word 'type' and the word 'lot' is replaced by the word 'batch'. This article of the Directive is transposed into Czech law by § 13(2) of the Pyrotechnics Act. For this reason, it is necessary to also replace these words in the aforementioned provision of the Pyrotechnics Act.

Re: Point 27

§ 13(2)(b)

Given the seriousness of the consequences of unprofessional or inaccurate handling of pyrotechnic articles, for pyrotechnic articles of all categories, it was necessary to also lay down a specific obligation unambiguously for pyrotechnic articles of category F2 and to stipulate that the minimum safety distance must always be indicated for fireworks of that category.

Re: Point 28

§ 14(1)

The current version of § 14(1) stipulates that the economic operator shall ensure that the labelling of the pyrotechnic article contains the information referred to in each subparagraph. Since this obligation is already laid down in the provisions laying down obligations for the relevant economic operators (manufacturers and importers), it is superfluous to mention this here too. This amendment brings § 14(1) into line with § 13(1).

Re points 29 and 30

§ 14(1)(b) and (c)

A corrigendum to Directive 2013/29/EU was published in Official Journal of the European Union L 38 of 10 February 2018, according to which, in Article 11(1) of that directive, the word 'kind' is replaced by the word 'type' and the word 'lot' is replaced by the word 'batch'. This article of the Directive is transposed into Czech law by § 14(1) of the Pyrotechnics Act. For this reason, it is necessary to also replace these words in the aforementioned provision of the Pyrotechnics Act.

Re: Point 31

§ 16(1)

The current version of the Pyrotechnics Act does not include the authorisation to make pyrotechnic products available on the market only for economic operators, so virtually anyone can do so. It is therefore newly stipulated that it is only economic operators who can make pyrotechnic articles available on the market. Whoever else makes pyrotechnic articles available on the market (making them available on the market as defined in § 3) shall be guilty of an infraction.

Re: points 32 and 33

§ 16(2)

This provision clarifies the wording of the information to be included in the list.

§ 16(3) is repealed, as this obligation of economic operators already follows from the Inspection Code, which the supervisory authority shall follow when carrying out an inspection of obligations under the Pyrotechnics Act.

Re: point 34



## § 17

In connection with the change in the structure of an Act, there was a partial change in the structure of this Act as well. § 17, or rather its content, has been moved to Title VI (§ 31), which regulates the treatment of pyrotechnic articles, including their display [§ 24(1)].

### Re: Point 35

#### § 18(3)

The obligations of manufacturers are supplemented by the obligations to affix the marking laid down in this Act. A pyrotechnic article is not only marked with only the CE marking, as the Pyrotechnics Act currently provides, but also with another marking, which is specified in particular in § 13 and § 14.

### Re: point 36

#### § 18(5)

The provision is amended so that the manufacturer ensures that the manufacturing process and its control ensure conformity with the type specified in the certificate and with the requirements of the Pyrotechnics Act. The current wording incorrectly states that the manufacturer shall ensure that the manufacturing process and its control are in conformity with the type specified in the certificate and with the requirements of the Pyrotechnics Act.

Directive 2013/29/EU provides in Annex 2, Module C2, point 2 Production: The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured pyrotechnic articles with the type described in the EU type-examination certificate and with the requirements of this Directive that apply to them. Government Regulation No 208/2015 also stipulates in Annex 1, point 2, subpoint 2.2 Production: The manufacturer shall take such measures so that the manufacturing process and its monitoring ensure conformity of the manufactured pyrotechnic articles with the type described in the EU type-examination certificate and with the requirements of the Act.

### Re: point 37

#### § 18(6)

The manufacturer must use an approved quality system, wherein the Pyrotechnics Act allows several modules based on quality assurance, namely Module D (conformity to type based on quality assurance of the production process), Module E (conformity to type based on quality assurance of the product) and Module H (conformity based on full quality assurance). However, a different scope is specified for each quality system, wherein the scope now provided for in § 18(6) of the Pyrotechnics Act (approved quality system for production, final inspection, design) is that corresponding only to Module H. For the remaining modules (D and E), a different (narrower) scope is used, so § 18(6) needs to be amended to correspond to all approved quality systems and not only to Module H.

### Re: point 38

#### § 19(3)

The provision is clarified in order to better fulfil its purpose. In the first place, it is clarified when it is possible to indicate the information not on the pyrotechnic article, but on its packaging or in an accompanying document. The current version states that this may be the case if it is not possible to indicate this on the pyrotechnic article. It will now be indicated that this may be the case if the size or nature of the pyrotechnic article does not allow it. These are thus more specifically defined reasons for affixing these particulars on the packaging or in the accompanying document.

The particulars appearing on the product or, where appropriate, on its packaging or in an accompanying document shall be specified in such a way that they are the name or trade name or trade mark and the only address at which the manufacturer can be contacted. The one-stop shop need-not be located in the Member State where the product is made available on the market. At the same time, it also need not be the manufacturer's registered office or any other address, but it may be, for example, the address of an authorised representative. However, it is necessary for this to be an address at which the manufacturer can be contacted. The manufacturer is required to provide a contact address on the product (but may provide other contact details, such as a telephone number, email address or other contact details). Such information, whether mandatory or optional, must be easily understandable by consumers and the supervisory authority.

§ 19(4)

Pursuant to Directive 2013/29/EU, manufacturers shall ensure that the pyrotechnic article is accompanied by instructions and safety information in a language that can be easily understood by consumers and other end-users, as determined by the Member State concerned. In the Czech Republic, this language should be Czech. Act No 634/1992 on consumer protection, as amended, also requires that this information be provided in the Czech language. The current wording of the Act only stipulates that the instructions for use should be in an intelligible form, but does not stipulate anything about the language in which they should be drawn up. The requirement for comprehensibility of the instructions for use is maintained in the provision as provided for in Directive 2013/29/EU, it has only been moved to the second sentence, which lays down, inter alia, additional requirements for the instructions for use, such as visibility, legibility and comprehensibility.

Re: point 39

§ 19(6)

Directive 2013/29/EU provides that the manufacturer must submit the information and documentation to the supervisory authority in a language which can be easily understood by that authority. The language easily understood by the supervisory authority in the Czech Republic is the Czech language, but the possibility is left for this information and documentation to be submitted in a language other than the Czech language, if the supervisory authority agrees. These entities may thus agree that information and documentation may be submitted, for example, in English. If they do not agree, the manufacturer shall submit the information and documentation in the Czech language.

Re: point 39

§ 20(2)

In connection with the change in the supervisory body (more on this in the general part of the explanatory memorandum), there is also a change in who the Ministry of Industry and Trade will provide with information on import authorisations issued and imports carried out. Instead of the CPHAA, this information will be provided to the CTIA or, in the case of pyrotechnic articles of category F4, T2 or P2, to the CMA.

Re: Point 41

§ 20(3)

Paragraph (3) obliges the importer to ensure that the manufacturer complies with certain obligations before placing pyrotechnic articles on the market. The importer is then responsible for ensuring that the manufacturer has complied with these obligations. These are cases where the manufacturer is established outside the EU, so these products are usually placed on the EU market not by the manufacturer but by an importer established in an EU Member State. One of the obligations of the importer should be to ensure that the manufacturer affixes all the required markings to the product. In this sense, the provision of paragraph (3) is added.

One of the obligations of the importer is for the manufacturer to comply with the requirements laid down in §18(7) and § 19(3) and (4), while the current version of the Pyrotechnics Act states that the importer shall provide this to the manufacturer on the basis of a contract. However, from the point of view of the fulfilment of those obligations and the subsequent public inspection, it is entirely irrelevant what the relationship between the producer and the importer is. What matters is that the importer ensures that the manufacturer fulfils those obligations, regardless of whether the importer ensures that the manufacturer fulfils those obligations on the basis of a contract.

Re: Point 42

§ 20(5)

The provision is clarified in order to better fulfil its purpose. In the first place, it is clarified when it is possible to indicate the information not on the pyrotechnic article, but on its packaging or in an accompanying document. The current version states that this may be the case if it is not possible to indicate this on the pyrotechnic article. It will now be indicated that this may be the case if the size or nature of the pyrotechnic article does not allow it. These are thus more specifically defined reasons for affixing these particulars on the packaging or in the accompanying document.

The particulars appearing on the product or, where appropriate, on its packaging or in an accompanying document shall be specified in such a way that they are the name or trade name or trade mark and the only address at which the manufacturer can be contacted. The one-stop shop need-not be located in the Member State where the product is made available on the market. At the same time, it does not have to be the registered office of the importer. However, it is necessary that this is the address at which the importer can be contacted. The importer is required to provide a contact address on the product (but may provide other contact details, such as a telephone number, email address or other contact details). Such information, whether mandatory or optional, must be easily understandable by consumers and the supervisory authority.

Re: Point 43

The importer shall ensure that the product is accompanied by instructions for use in an intelligible form. However, this obligation already follows from § 20(3), according to which the importer is obliged to ensure that the manufacturer ensures the requirements laid down in § 19(4), according to which the manufacturer is to ensure that the pyrotechnic article is accompanied by instructions for use, which must be in Czech. For this reason, § 20(6) is deleted.

Re: point 44

§ 21(5)

Directive 2013/29/EU provides that the importer must submit the information and documentation to the control authority in a language which can be easily understood by that authority. The language easily understood by the supervisory authority in the Czech Republic is the Czech language, but the possibility is left for this information and documentation to be submitted in a language other than the Czech language, if the supervisory authority agrees. These entities may thus agree that information and documentation may be submitted, for example, in English. If they do not agree, the manufacturer shall submit the information and documentation in the Czech language.

Re: point 45

§ 22(2)

Directive 2013/29/EU requires the distributor, before making a pyrotechnic article available on the market, to verify, inter alia, that the product is accompanied by documents, instructions and safety information that can be easily understood by end-users in the Member State. Czech is the language

easily understood by end-users in the Czech Republic. Therefore, the proposed text stipulates that these documents must be in Czech, instead of the currently-used ‘intelligible form’, which says nothing about the language that should be used.

#### Re: point 46

In connection with the amendment to the Act, in particular with the professional competence of persons who may handle pyrotechnic articles of categories F3, F4, T2 or P2, the structure of the Pyrotechnics Act is also being partially modified, with Title VI regulating the handling of pyrotechnic articles.

#### Regarding the individual sections

##### § 24

Title VI regulates the handling of pyrotechnic articles. § 24 of the Act sets out what is considered to be the treatment of pyrotechnic articles, building on the current definition in § 3(u) (the definition in § 3 will be deleted). Handling means the activities most frequently encountered in the case of pyrotechnic articles, such as procuring for oneself or another (for example, by selling or buying), storing, displaying, disposing, destroying and firing, and carrying out fireworks activities or fireworks, or otherwise handling pyrotechnic articles. The purpose of stating that this also involves other handling is to ensure that any other handling of pyrotechnic articles is not placed outside the scope of the law. However, it will be up to the competent supervisory authority to assess whether such activity constitutes handling. However, this should be a very marginal issue, as the most frequent activities are already covered by paragraph (1).

The definition of the concept of ‘handling of pyrotechnic production’ is particularly important in relation to pyrotechnic articles of categories F4, T2 and P2 as well as category F3, which will also be subject to the requirement of professional competence, and it is therefore necessary to determine which activities will be subject to that professional competence. These are dangerous pyrotechnic articles, which (with exceptions) can only be handled by persons with professional competence [as defined in § 3(e) this is a natural person who has been issued with a certificate of professional competence].

§ 24(2) and (3) then stipulates who may handle pyrotechnic articles of category F4, T2 or P2, this being only a person with professional competence [§ 3(e)] and a business. Where handling is referred to here, it means precisely the handling pursuant to paragraph (1). Therefore, if pyrotechnic articles within the meaning of paragraph (1) are handled and these pyrotechnic articles are pyrotechnic articles of category F4, T2 or P2, only a person with professional competence or an entrepreneur may be the one handling them. However, if pyrotechnic articles of category F4, T2 or P2 are not concerned, they may be handled by persons other than those referred to in paragraphs (2) and (3), with the exception of category F3, for which certain activities will also be covered by professional competence. Paragraph (2) thus governs handling within the meaning of paragraph (1), with one exception, however, this being procurement for another. This type of handling can be performed by anyone regardless of whether they are a person with professional competence or a business [as stipulated in paragraph (3), a business may handle these pyrotechnic articles only via persons with professional competence]. This is because such a requirement would go beyond Directive 2013/29/EU, which does not require professional competence for such an activity.

The handling of pyrotechnic articles in the case of category F4, T2 or P2 may only be carried out by a person with professional competence or by a business, except in the case of procurement by another person. A business (whether a corporate entity or sole trader) may handle pyrotechnic articles only if they are handled by persons with professional competence. Therefore, if a business intends to handle pyrotechnic articles, it must always have a person with professional competence

at their disposal. This is because these are very dangerous pyrotechnic articles and it is quite desirable for the person handling them to be a person with professional competence. It is up to the business as to what relationship they have with the person with professional competence, whether they will be in an employment or other relationship, and in then case of a sole trader, this person with professional competence may be the sole trader themselves. Again, this rule will not apply if this handling involves procurement (this rule also does not apply if pyrotechnic articles other than categories F4, T2 or P2 are to be handled).

In the case of economic operators as entities making pyrotechnic articles available on the market, the Act regulates the handling of any pyrotechnic article (any category of pyrotechnic article). Pyrotechnic articles not handled by economic operators are regulated by the Act only if they are pyrotechnic articles of category F4, T2 or P2, as well as category F3. The Act therefore does not provide for any regulation for the handling of pyrotechnic articles of categories F1, F2, T1 and P1, except where such pyrotechnic articles are handled by an economic operator. However, as regards pyrotechnic articles of category F4, T2 or P2, as well as category F3, the Act regulates their handling even if they are handled by a person other than an economic operator.

The Pyrotechnics Act will newly also regulate professional competence with regard to pyrotechnic articles of category F3. As in the case of categories F4, T2 and P2, only persons with professional competence and businesses will be able to handle these pyrotechnic articles, provided that they are handled by a person with professional competence [paragraphs (4) and (5)]. However, compared to categories F4, T2 and P2, the list of activities for which professional competence will be required will be significantly shorter. For category F3, the activities will be the following: procuring for oneself, firing them or using them to perform fireworks. Only in the case of these activities will it be required that these pyrotechnic articles are handled by a person with professional competence or, through that person, by a business. In case of other handling (e.g. storage), professional competence is not required (as opposed to the above categories F4 T2, P2). This shorter list of activities is due to the lower hazards of pyrotechnic articles of category F3 compared to pyrotechnic articles of category F4 (T2 and P2).

This rule of professional competence for pyrotechnic articles of category F3 never applies to economic operators [paragraph (6)]. Even if economic operators handle category F3 pyrotechnic articles in a way for which professional competence would otherwise be required, professional competence will not be required for economic operators. Thus, an economic operator will be able to purchase (procure) pyrotechnic articles of category F3 without such an operator having to be a person with professional competence or having to ensure that those pyrotechnic articles are handled by a person with professional competence. As these pyrotechnic articles (category F3) present a lower level of hazard than pyrotechnic articles of categories F4, T2 and P2, the requirement of professional competence for economic operators as well would imply a significant interference with their activities. Moreover, these operators in the supply chain of pyrotechnic articles can be expected to have a higher degree of competence in handling those pyrotechnic articles than other persons (in particular consumers). For this reason, the requirement of professional competence in the case of category F3, to the extent stipulated by the Act, does not apply to economic operators. Other persons (whether consumers or entrepreneurs) who are not economic operators will be obliged to handle such pyrotechnic articles to the extent stipulated by the Act only under the conditions set out in paragraphs (4) and (5).

As regards the procurement of pyrotechnic articles, this means, in particular, their purchase, but no other means of procurement is excluded either. Such procurement may be, for example, the acquisition of these pyrotechnic articles by gift or other free-of-charge means (the condition here is not the acquisition of ownership). The purpose is to cover all possible means of obtaining

pyrotechnic articles. Procuring pyrotechnic articles to others means, in particular, their sale, but no other way of procuring them is excluded either. This procuring can be their donation, for example.

Handling means an activity in which a natural person lifts or moves pyrotechnic articles, for example, or otherwise physically transfers or moves them, or performs another activity that is not included in the list of activities covered by the concept of 'handling' [paragraph (1)]. Hence this is an activity where, for example, there is physical contact with pyrotechnic articles. However, this does not have to be a direct physical contact between a person and the pyrotechnic article (e.g. holding the pyrotechnic article in one's hand), but also, for example, a situation where the pyrotechnic article is situated, for example, in a transport crate (except for the cases listed below). These include, for example, a retailer in a shop, an employee in a warehouse, persons transporting these products if they handle them, a consumer who purchases this pyrotechnic article, a person who launches it and handles it in the process, etc. However, if it is a person who, for example, unloads pyrotechnic articles (from a vehicle, a container) that are packed and classified according to ADR, then this person handles packed pyrotechnic articles that are classified and authorised to be transported and thus handles the packaging in which these pyrotechnic articles are packed (does not handle the pyrotechnic article itself). For this reason, these persons do not have to be persons with professional competence under the Pyrotechnics Act, as they are subject to training of persons involved in the transport of dangerous goods pursuant to Chapter 1.3 of ADR.

Re § 25

§ 25(1) governs the issue of the handling of pyrotechnic articles in the case of procurement. The general obligation as to who may handle pyrotechnic articles of categories F3, F4, T2 or P2 is laid down in § 24. § 24 also stipulates that this rule does not apply in the case of procurement to another.

Therefore, although a person other than a person with professional competence or a business (ensuring handling by a person with professional competence) may procure other pyrotechnic articles of category F3, F4, T2, P2, there is still an obligation that the person who procures these pyrotechnic articles (for themselves) must be a person with professional competence or a business.

Thus, if, for example, there is a relationship between the seller and the buyer in the case of pyrotechnic articles of categories F3, F4, T2 or P2, the seller may be a person without professional competence, or a business without such a person, but the buyer may only be a person with professional competence or a business [with the simultaneous application of § 24(3) and (5)]. Therefore, although the seller does not have to be a person with professional competence or a business with such a person, such a person must still be responsible for selling such a pyrotechnic article only to a person who is authorised to handle it [§ 24(2) and (4)]. Therefore, an obligation is laid down that a person who procures pyrotechnic articles of category F3, F4, T2 or P2 may procure such pyrotechnic articles only to a business within the meaning of § 24(3) or (5) or to a person with professional competence.

In the case of category F3, the exemption provided for in § 24(6) applies. Thus, § 25(1) does not apply where those pyrotechnic articles are procured by an economic operator.

§ 25(2) prohibits the sale of pyrotechnic articles, for example, at marketplaces or stalls where they are most frequently sold illegally (e.g. to persons who have not reached the required age or are not persons with professional qualifications, if professional qualifications are required). This prohibition also applies to portable equipment and temporary buildings, which according to the Building Act is a building for which the Building Authority will limit its duration in advance. Only pyrotechnic articles of category F1, which are low-risk pyrotechnic articles, often intended also for indoor use (e.g. sparklers), as well as pyrotechnic articles sold at exhibitions and

demonstrations, will be exempted from this rule. These events often focus on the sale of pyrotechnic products. To this end, however, safety measures must be taken at these events to protect lives, health and property, as stipulated by the Pyrotechnics Act (such sale is only marginal, however), notification to the competent authorities must be made and other legal obligations must be complied with.

#### § 25a

§ 25a governs the procurement of pyrotechnic articles by means of distance communication. In particular, this will involve the purchase and sale of pyrotechnic articles, but this regulation also applies to other forms of procurement, although given that obligations are imposed on economic operators there, it can be assumed that the purchase and sale will be an almost exclusive form of procurement.

The economic operator shall be obliged to take measures to ensure verification that the person who acquires the pyrotechnic statements is a person who has reached the required age pursuant to § 5(1) and, in the case of pyrotechnic articles for the handling of which professional competence is required, that he is a professionally competent person. It is up to the economic operator to take measures to verify age and/or professional competence. However, this must be a demonstrable means of verification. For example, the fact that a person declares to be of a certain age or a professionally competent person before accessing the website of an on-line shop for pyrotechnic articles by ticking the appropriate box cannot be considered as such a means of verification.

Relating to the sale of pyrotechnic articles, the economic operator shall be obliged to verify that those pyrotechnic articles are also handed over to a person of the relevant age pursuant to § 5(1) or, in the case of pyrotechnic articles for which professional competence is required, to a person with professional competence. This obligation applies irrespective of the place where those pyrotechnic articles are handed over, so it is irrelevant whether they are personally received at the point of sale or delivered to another place where those pyrotechnic articles are handed over. This obligation remains with the economic operator, irrespective of whether the transfer is carried out by that economic operator or by a third party. This measure thus rules out the handover of these pyrotechnic articles via vending machines, for example.

For pyrotechnic articles of categories F3, F4, T2 and P2, it is further stipulated that these pyrotechnic articles may be handed over only in places where their storage is allowed pursuant to § 28 of this Act. These places are warehouses, stockrooms or sales rooms meeting the requirements of legislation governing the requirements for construction (the Building Act). However, it should not be forgotten that an economic operator is obliged under § 28 to store not only pyrotechnic articles of categories F3, F4, T2 and P2, but all pyrotechnic articles [§ 26(1)].

#### § 26

The issue of storage of pyrotechnic articles is regulated.

Economic operators may store pyrotechnic articles under the conditions laid down in §§ 27 to 30. In their case, it is irrelevant which pyrotechnic articles, or which category of pyrotechnic articles, are involved. Under §§ 27 to 30, economic operators are obliged to store all pyrotechnic articles.

As regards pyrotechnic articles of category F4, T2 or P2, only persons with professional competence or businesses (i.e. also economic operators, as businesses, but also other business entities that are not economic operators) may store them [this is handling within the meaning of § 24(1)] under the conditions set out in § 24(3).

Given the high hazards of pyrotechnic articles of category F4, T2 or P2, it is desirable that such pyrotechnic articles be stored under the conditions laid down in §§ 27 to 30. Therefore, pursuant to paragraph (3), a business that is not an economic operator [a business that is an economic operator is subject to paragraph (1)] or a person with professional competence must store these pyrotechnic articles under the conditions set out in §§ 27 to 30.

#### § 27

§ 27 lays down general requirements for the storage of pyrotechnic articles. These are not new requirements, but requirements that are regulated in the currently applicable version of the Pyrotechnics Act in § 26(1).

#### § 28

This is the current § 26(2) and (4)

These are the current requirements for the storage of pyrotechnic articles. It is stipulated that pyrotechnic articles are stored in a warehouse, stockroom or sales room, provided that these premises meet the requirements laid down in legislation governing construction requirements. Furthermore, pyrotechnic articles may be stored in premises associated with their display and demonstration (these activities are regulated in § 31). Exceptions are cases where the law provides otherwise. This means this Act, in particular, which provides for an exception to this obligation to store pyrotechnic articles in a warehouse, stockroom or sales room for pyrotechnic articles of category F1, but cases where an exception to this general rule is stipulated by an entirely different act cannot be ruled out.

The Act also lays down certain requirements for the premises in which pyrotechnic articles are stored. It is necessary to ensure prohibition of smoking and handling open flames, as pyrotechnic articles could be initiated. It is also necessary to ensure that other activities that could put trigger pyrotechnic articles are prohibited. These requirements must be ensured regardless of whether the pyrotechnic articles are stored in a warehouse, stockroom or sales room, or stored elsewhere if the Act so provides.

In paragraph (4), reference is made to the newly inserted Annex 4, which sets out the requirements for storage and fire safety of a warehouse. These are requirements that must be met when pyrotechnic articles are stored in a warehouse, i.e. they do not apply to other premises where pyrotechnic articles may be stored.

It should be noted that these storage rules apply only to those entities which are obliged to comply with the provisions of § 28 during storage. Such persons are the entities referred to in § 26, namely economic operators as regards the storage of any pyrotechnic articles [§ 26(1)] and businesses that are not economic operators and persons with professional competence as regards the storage of pyrotechnic articles of categories F4, T2 or P2. Other operators are not covered by that storage provision, nor are the operators referred to in § 26(2) in respect of categories of pyrotechnic articles other than categories F4, T2 or P2. Therefore, it is not the case, for example, that a natural person (consumer) who purchases pyrotechnic articles of category F1, F2 or F3 (purchasing pyrotechnic articles of category F4 for this person if he is not a person with professional competence is prohibited, see § 24) must store these pyrotechnic articles in a warehouse, stockroom or sales room, as he is not a person to whom § 26 would apply and therefore is not subject storage requirements either. Such a person then stores these products in accordance with the instructions for use.

#### § 29

This is the current § 27.



The provisions concerning the weight limits for pyrotechnic articles that can be stored in a stockroom or sales room are amended.

Pyrotechnic articles the net weight of which does not exceed 750 kg of explosives may be kept in a stockroom provided that they are all contained in the transport packaging of the manufacturer or importer and marked in accordance with the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) with classification code 1.4 S. Furthermore, pyrotechnic articles the net weight of which does not exceed 300 kg may be kept in a stockroom provided that they are contained in the manufacturer's or importer's original transport packaging and marked with classification code 1.4 G in accordance with the ADR, of which at most one such package of each type of product may be opened. If the above conditions are not met [i.e. the conditions in the draft amended Act in subparagraphs (a) and (b)], pyrotechnic articles with a net weight of explosive substances not exceeding 200 kg may be kept in a stockroom.

### § 30

This is the current § 29

Pyrotechnic articles of category F1 may also be stored outside the premises set out in § 28(1). Pursuant to § 28(2), pyrotechnic articles of category F1 (this is a low-risk category of pyrotechnic articles) may also be stored outside a warehouse, stockroom or sales room, or premises related to the display and demonstration of pyrotechnic articles. In this case, it shall be ensured that the compartment is equipped with at least one portable water or foam fire extinguisher having a capacity of at least 13A or a portable powder fire extinguisher having a capacity of at least 21A.

The fact that pyrotechnic articles of category F1 may also be stored in premises other than warehouses, stockrooms or sales rooms is without prejudice to the obligation to ensure that smoking or handling open flame is prohibited in such premises and that other obligations under § 28(2) and § 27 are complied with.

Again, in this case, this applies only to persons to whom § 26 applies.

### § 31

The Pyrotechnics Act, as amended by the draft amendment, regulates the display and demonstration of pyrotechnic articles in such a way that, under the conditions laid down in this Act, an economic operator may display or demonstrate pyrotechnic articles, as well as a person with professional competence and a business who is not an economic operator. Under the conditions laid down in this Act, an economic operator must display or demonstrate all pyrotechnic articles, whereas persons with professional competence and businesses who are not economic operators must display or demonstrate only pyrotechnic articles of category F4, T2, P2. The display or demonstration of pyrotechnic articles of categories other than F4, T2 or P2 by persons other than economic operators is not regulated.

The Act stipulates that it involves the display or demonstration of pyrotechnic articles, without specifying the kind of place involved. As a rule, they will be exhibited or presented at trade fairs and exhibitions, but their demonstration may take place, for example, at demonstrations or similar events. It is always necessary to assess the details of the given activity. For example, the sale of pyrotechnic articles on Christmas markets cannot be considered display or demonstration. However, it is not ruled out that the display or demonstration of pyrotechnic articles will also include the sale of pyrotechnic articles. If such sale takes place, the relevant provisions of the Pyrotechnics Act (e.g. concerning the obligations of distributors, age issues, etc.) apply to it.

During display, persons pursuant to paragraphs (1) and (2) must ensure that measures are taken to ensure that pyrotechnic articles are displayed in a manner that does not endanger the life and

health of persons and property. The details shall be laid down in a decree of the Ministry of Industry and Trade.

Paragraph (3) lays down the obligation to define the endangered area when demonstrating pyrotechnic articles, in accordance with the manufacturer's instructions. Where such instructions do not specify the endangered area or are not part of the pyrotechnic article [this may include, in particular, cases where non-verified pyrotechnic articles are demonstrated, see paragraph (7)], the endangered area shall be determined according to the pyrotechnic article which is functionally the most comparable to the pyrotechnic article to be demonstrated.

An obligation to equip the area in which pyrotechnic articles are displayed or demonstrated with fire extinguishers is also stipulated. The details shall be laid down in a decree of the Ministry of Industry and Trade.

Paragraph (4) lays down the obligation to notify the CTIA at least 5 days before the commencement of the display or demonstration, or in the case of pyrotechnic articles of category F3, F4, T2 or P2, the DMA. A notification must also be made within the same period to the fire brigade, irrespective of the category of pyrotechnic articles to be displayed or demonstrated.

An exception to that notification concerns cases where fireworks activity or fireworks are to be carried out as part of the demonstration. This is because for the performance of fireworks activity or fireworks the Act stipulates separate authorisation or reporting regimes, where the competent authorities (CTIA, DMA, fire brigades) are aware that fireworks activity or fireworks are to be carried out on the basis of this authorisation or reporting regime. A person performing fireworks activity or fireworks as part of a demonstration would thus inform the same authorities twice about the same fireworks or fireworks activity. However, if there is to be a demonstration of pyrotechnic articles, where this demonstration is not fireworks or fireworks activity (i.e. it does not meet their definition in § 3), this must be reported. As regards exhibition, this must always be reported (even if, in addition to the exhibition, there is also a demonstration, which is not reported precisely because it is, for example, fireworks).

The report shall include an indication of the place, date and time of the start and end of the exhibition or demonstration (in case both the exhibition and the demonstration are to take place, information on both shall be reported). In addition, the name, business name or name of the exhibitor, the address of their registered office or residence and, in the case of a business, the identification number shall be given. Last but not least, the quantity and type of pyrotechnic articles to be exhibited or demonstrated shall be indicated.

An economic operator may also display or demonstrate pyrotechnic articles for which conformity has not been assessed [paragraph (7)]. These are pyrotechnic products that do not comply with the requirements of this Act, or their compliance has not been demonstrated by the relevant conformity assessment procedure. Therefore, such pyrotechnic articles cannot be placed on the market, but for the purpose of their future placing on the market (at a time when compliance has already been demonstrated), an economic operator may exhibit or demonstrate such pyrotechnic articles at trade fairs, exhibitions, demonstrations and similar events. The condition is that these pyrotechnic articles are marked with the name and date of such an event, as well as information that they are pyrotechnic articles that do not meet the requirements of this Act and are not for sale. Only an economic operator may display or demonstrate such pyrotechnic articles. The display of such pyrotechnic articles shall be possible only under the conditions under which the approved pyrotechnic articles, namely those referred to in paragraphs (3) and (4), are displayed. In the case of these products, the aforementioned exemption from reporting does not apply if the demonstration consists in the performance of fireworks and fireworks, because both fireworks activity and fireworks are defined (see § 3) on the basis of the pyrotechnic articles or their

categories that are used for the performance. Since these unapproved pyrotechnic articles cannot yet be classified in the appropriate category, their demonstration cannot constitute fireworks activity or fireworks within the meaning of this Act. That is why their demonstration must always be reported.

The Act further stipulates that this is without prejudice to obligations in the performance of fireworks activity or fireworks. This means that the provisions of the Act regarding the performance of fireworks activity and fireworks also apply to these events, i.e. the obligation to apply for a permit or to report their performance, as the Act stipulates in other provisions.

### § 32

In fireworks activity [see § 3(u) for a definition] pyrotechnic articles of category F4 or T2 are used, so only a person with professional competence or a business can engage in fireworks activity. Businesses may do so only under the conditions laid down in § 23(3).

Fireworks activity, in view of its high hazards, can only be carried out in such a way as to ensure the protection of life, health of persons and property. Details to ensure the above are set out by the CMA in its decree. Every fireworks activity is managed by a head fireworks technician. A head fireworks technician can only be a person with professional competence, precisely in view of the fact that fireworks consist of pyrotechnic articles of category F4 or T2. The head fireworks technician is responsible for following the technical procedure.

A technical procedure must be developed for each fireworks. The only exception is the professional training that a natural person must successfully complete in order to obtain proof of professional competence. The same technical procedure may be used for the purpose of providing vocational training, where, inter alia, fireworks are carried out as part of this training. This only applies, however, provided that the fireworks activity is carried out under the same or at least similar conditions. Otherwise, a new technical procedure needs to be developed. The technical procedure is developed by the head fireworks technician, who is then responsible for it being followed. The requirements for the technical procedure are laid down in a decree of the CMA. The technical procedure includes, in particular, the conditions for the protection of life, health and property for the performance of fireworks activity and the definition of the safety perimeter. Fireworks activity will usually be carried out at one site and when a safety perimeter has been established [see § 3(w) for the definition of a safety perimeter].

If the fireworks are to be carried out by a person who is entitled to perform similar activities in another Member State of the European Union, a Contracting State to the Agreement on the European Economic Area or the Swiss Confederation, the CMA shall recognise their professional qualifications pursuant to Act No 18/2004 on the recognition of professional qualifications and other competences of nationals of Member States of the European Union and of certain nationals of other States and amending certain acts (the Act on the Recognition of Professional Qualifications), as amended.

### § 33

An authorisation scheme is in place for fireworks. The reason for this is the public interest in the protection of human health and safety. However, the law may provide for an exception where the authorisation scheme does not apply. Authorisation to carry out fireworks activity is decided by the locally competent DMA. Local jurisdiction is determined pursuant to the Administrative Code. Fireworks activity permit proceedings are initiated on the basis of an application. The authorisation scheme does not apply to fireworks activity carried out using pyrotechnic articles which, even if they are category F4 or T2, are listed in Annex 3 to the Pyrotechnics Act. In such cases, the performance of fireworks activity is merely subject to notification (§ 35). However, in

the case of fireworks activity consisting of products of category F4 or T2 listed in Annex 3 and pyrotechnic articles of category F4 or T2 not listed in Annex 3, it is necessary to apply the authorisation scheme.

In addition to the particulars laid down in the Administrative Code for submitting an application, the application must include the technical procedure and the written consent of the owner of the land on which the fireworks activity is to be carried out to agree to such performance.

The main party to the proceedings is the applicant, whose status derives from § 27(1) of the Administrative Code. Other parties to the proceedings are the municipality where the fireworks are to be carried out and the owners of property situated within the safety perimeter. In accordance with § 27(3) of the Administrative Code, they are interveners pursuant to § 27(2) of the Administrative Code.

The DMA shall state in the decision, specifically in its operative part, the date, place and estimated time of the fireworks activity, or it may set out conditions for ensuring the safe performance of fireworks activity. Fireworks activity may then be carried out only in accordance with this Decision. Otherwise, there would be an infraction. If an infraction were not imposed, it would for practical purposes an unenforceable obligation.

As regards administrative proceedings, apart from the above, the Act does not provide for any further derogation from the Administrative Code, so the rest of the proceedings are governed by the Administrative Code.

#### § 34

This is the current § 35.

Instead of a person with professional competence, the obligation to keep records is now stipulated for the head fireworks technician. This is a record of information related to fireworks activity set out in paragraph (3). It follows from § 24 of the Pyrotechnics Act, as amended by the proposed Act, that fireworks activity can only be carried out by a natural person with the professional competence, which a head fireworks technician must be. Businesses may carry out fireworks activity under the conditions set out in § 24(3).

However, there may be a situation where the head fireworks technician is an employee of an entity that has been granted a permit to carry out fireworks activity. In such a case, the record-keeping obligation does not lie with the head fireworks technician as an employee, but with the employer to whom the permit was issued.

The records must be kept for at least one year from the end of the fireworks activity. Upon request, it must be submitted to the CMA or DMA.

The records shall contain the registration number of each pyrotechnic article (§ 12) and the number of uses of each pyrotechnic article.

#### § 35

The notification of the performance of fireworks activity and fireworks is based on the current legislation. However, it has undergone several changes. The current version of the Pyrotechnics Act regulates the notification of fireworks (§ 32), and this part of the Act is also referred to in the current § 34(8), according to which fireworks activity that is not permitted is to be notified pursuant to § 32(2). This created a situation where the notification of fireworks activity was to be provided according to the provisions on the notification of fireworks.

For these reasons, the draft § 35 applies to both fireworks and fireworks activity. Now, however, it does not involve notification but rather announcement. The reason for this change is that the execution of fireworks activity or fireworks is merely to be announced to the competent authorities. They are, therefore, merely to be provided with information that such execution will take place. The fact that a notification is to be made under the current version of the Pyrotechnics Act may give the impression that the competent authorities to which the performance of fireworks activity or fireworks is notified can prohibit their execution, as is quite common in notification schemes. However, this is not so in this case, and the competent authorities do not have such ability. The competent authorities can only check that the notification has been made, that it has been made in accordance with the law and that the fireworks activity or fireworks have been carried out in accordance with this notification.

In the case of fireworks, the person who intends to execute the fireworks shall announce this fact the district mining authority, the municipal office and the fire rescue service of the region where the fireworks are to be executed. This notification must be made no later than 5 working days before it is made. Although, from the point of view of the Pyrotechnics Act, the municipality within which the fireworks are to be carried out cannot prohibit their execution, this does not in any way affect the ability of that municipality to address this issue in the event of a breach of its by-law that prohibits the use of pyrotechnic articles. Because the performance of the fireworks constitutes the firing of category F2 and/or F3 pyrotechnic articles, the performance of the fireworks announced under the Pyrotechnics Act may come into conflict with a by-law in which the municipality prohibits the use of those pyrotechnic articles. It is therefore up to the notifier to ascertain whether or not, by announcing and subsequently carrying out the fireworks, it is infringing a by-law.

In the case of the performance of fireworks activity that announced [i.e. fireworks pursuant to § 33(7)], its execution must be announced. Although such fireworks activity is subject to announcement instead of permission, this has no bearing on the need to comply with the obligations relating to fireworks pursuant to § 32 and § 34. In particular, the obligation to designate a head fireworks technician who is required to develop a technical procedure and carry out fireworks according to that procedure.

Fireworks activity is announced to the DMA, the municipal office and the fire rescue service of the region where the fireworks activity is to be executed. The execution of fireworks activity also cannot be prohibited. The announcement must be made no later than 7 working days before its execution. Compared to fireworks, there is an obligation to provide announcement more days in advance prior to execution, which is due to the fact that fireworks activity is associated especially with the need to check the technical procedure (which is not drawn up for fireworks). The assessment of the technical procedure may then have an impact on the question of whether the inspectors of the DMA should go to carry out an inspection of the fireworks activity being carried out. As in the case of fireworks, fireworks activity cannot be prohibited. The DMA are supervisory authorities in the field of fireworks activity [§ 54(b)] and can thus check compliance with the obligations laid down in this Act in the field of fireworks activity (both authorised and announced) and penalise non-compliance with these obligations. Furthermore, the notifier must also inform the municipalities where the fireworks activity to be carried out of the execution of the fireworks activity. This gives the municipality the opportunity to check whether the performance of fireworks activity is not in conflict with its by-law that prohibits or restricts the use of pyrotechnic articles. It is up to the announcer to ascertain whether they are infringing the relevant by-law.

In the case of both fireworks and fireworks activity, the announcer shall also inform the relevant fire brigade. The fire brigade does not investigate in any way if the announcement is correct. The reason it should be informed is so that it is informed of a potential fire risk.

Announcement of fireworks and fireworks activity must be in writing and must contain the particulars laid down in the Administrative Code, in § 37(2), which lays down the particulars of filing. In the case of announcement of fireworks, the announcement must also contain other particulars stipulated in § 35(4) of the Act. In the case of announcement of fireworks activity, the announcement must also include the technical procedure. The content of the technical procedure is determined by a decree of the CMA.

The announcer must carry out fireworks activity or fireworks in accordance with the announcement. The announcement must be in accordance with the Act. Fireworks activity or fireworks cannot be required to have been carried out in accordance with the announcement if such notification is not in accordance with the Act. In such a case, the fireworks or fireworks activity would be considered as having been carried out without announcement.

#### § 35a

As a general rule, the obligation of free movement of pyrotechnic articles which comply with the requirements of Directive 2013/29/EU (transposition of which is ensured by the Pyrotechnics Act) applies. Such pyrotechnic articles have free movement on the EU market. However, this Directive also ensures the free movement of a pyrotechnic article that has been manufactured for the purpose of its research, development or testing, even though it does not comply with the stipulated requirements. This applies only if such a pyrotechnic article is visibly labelled with information that it does not comply with these requirements and is intended for research, development or testing only. The Act also stipulates this in § 35a. Similarly to pyrotechnic articles that meet the requirements of this Act, the free movement of pyrotechnic articles that meet the above conditions must not be prevented by public authorities in the Czech Republic.

#### § 35b

The Act introduces a general prohibition on the handling of pyrotechnic articles as regards their firing and their use for the performance of fireworks activity or fireworks in the vicinity of specified buildings, structures and facilities. These are places where, given their purpose of caring for specific categories of people or a larger number of animals (hospitals, homes for seniors, shelters, zoos, etc.), it is legitimate to insist on maintaining a certain minimum of peace and quiet. In other words, the firing of pyrotechnic articles in the vicinity of stipulated sites, even if it is a one-off and incidental activity, may, in view of the noise and light, be highly at odds with the purpose and operation of these sites, which is why it is necessary to rule out such potential firing directly by the Act.

Buildings, facilities and structures are defined using terms already contained in the relevant legislation, so that it is sufficiently clear to persons using pyrotechnics, but also to supervisory authorities, where it is possible to use pyrotechnics and where, on the contrary, it is prohibited. This legislation is listed in footnotes 22 to 28.

The statutory prohibition in this case will apply up to a distance of 250 m, unless the instructions for the use of pyrotechnic articles provide for a greater safety distance (then the greater distance will apply). In the case of buildings, the distance will be calculated, as a rule, from their exterior walls, and in the case of land parcels, from their boundaries as indicated in the land register.

The statutory prohibition concerns the handling of all categories of pyrotechnic articles except category F1, on the grounds that this category of fireworks is not a major problem in terms of noise and harm to the environment, and is often intended for indoor use.

The proposed prohibition is nothing new in the Czech Republic's legal code. In the past, a similar regulation (albeit legislatively less successful) was contained in § 8(8) of CMA Decree No 174/1992 on pyrotechnic articles and their handling, as amended up to 8. 7. 2014. Because (with the exception of the statutory prohibition to carry out fireworks and use fireworks in national parks) this issue is currently not addressed at the national level, it can also be found in the by-laws of some municipalities (e.g. By-law of the Statutory City of Olomouc No 4/2024, which regulates the use of fireworks within the limits of the Statutory City of Olomouc).

#### § 35c

The proposed provision of § 35c newly defines the material competence of municipalities in the exercise of their self-government to issue by-laws to regulate the handling of pyrotechnic articles [Article 104(1) and (3) of the Constitution and § 10(d) of the Municipalities Act]. It is legislation that replaces and corrects the existing ability of municipalities to issue by-laws on the use of pyrotechnic products with reference to § 10(a) of the Municipalities Act (establishing obligations to safeguard local matters of public order) or § 10(c) of the Municipalities Act (stipulating obligations to ensure the cleanliness of streets and other public spaces, to protect the environment, public greenery and to use municipal facilities serving the needs of the public). In relation to § 10(a) to (c) of the Municipalities Act, § 35c is special and covers all the grounds on which municipalities could regulate pyrotechnic articles within their limits with reference to the provisions in question.

The ability of municipalities to issue by-laws to regulate the use of pyrotechnic articles was approved by the Constitutional Court in its rulings of 13. 9. 2006, case No Pl. ÚS 57/05 (Nový Bor), and of 8. 6. 2010, case No Pl. ÚS 58/05 (České Velenice). The Constitutional Court stated in the above-mentioned rulings that the subject matter and objective of the statutory regulation of the day is different from the subject matter and objective pursued by the by-laws, i.e. the safeguarding of public order in the municipality, the protection of citizens from noise, or the protection of cultural monuments from damage affecting their socio-cultural dimension. At the same time, in these rulings the Constitutional Court expressly confirmed that municipalities may prohibit the use of pyrotechnic articles not only in public areas, but in any places in the municipality where the activity would be contrary to interests they protect.

In the case of municipal regulation of the use of pyrotechnic articles, municipalities have so far had to consider and justify the proportionality of the chosen solution. The Constitutional Court in its ruling of 22. 4. 2008, case No Pl. ÚS 35/06 (Kořenov), also with regard to its previous case law [e.g. ruling 8. 3. 2007, case No Pl. ÚS 69/04 (Ústí nad Labem), stated that *'[in] accordance with the principle of proportionality, in general it holds that a municipality should not formulate prohibitions (in light of ruling in case No Pl. ÚS 69/04 with the exception of prostitution) across the board, but always only to the least restrictive extent. This means that the regulation of certain behaviour should in principle apply to certain places or periods defined in the by-law, taking into account the nature of the behaviour and its ability to disturb (to a significant extent) public order in the municipality. An example is the regulation of activities that disturb public order by noise. Noisy activity will be more disruptive to public order in a residential area, but will be significantly less disruptive in an industrial area where no one lives, or in an area with a concentration of entertainment venues where a higher noise threshold can be expected. It is well known that the same noise level has a different effect during the working day, than on non-working days or at night. The nature of the noisy activity will also play a role. [...] In other words, if the Constitutional Court were to allow blanket prohibitions in the future without the municipality*

*being obliged to justify the need for such blanket regulation, there would be a risk of territorial particularisation of public law according to the territorial limits of individual municipalities. General prohibitions, which must be made regardless of local specifics, are primarily implemented by an Act. The existence of local specifics and the need to respond to them in a certain regulatory way indicates precisely the limitation of a prohibition to certain places in a municipality or to certain time periods, preferably a combination of both. On the contrary, blanket prohibitions indicate arbitrariness, disregard for the principle of proportionality and the assumption of the power to pass general regulations, which, in accordance with the principle of a uniform legal order, should apply in principle in the same way to the entire territory of a unitary state.*

Therefore, in view of the conclusions of the Constitutional Court presented (except in very exceptional and specific cases), it was de facto ruled out that municipalities could prohibit the firing of pyrotechnic articles ‘across the board’ (i.e. all year and everywhere) within their limits. It was based, inter alia, on the liberal attitude of the legislator itself to this activity – the legislation relating to the actual use of pyrotechnic articles was minimalist and the freedom of the individual was therefore relatively broad. Municipalities could only address the environmental or social impacts of this activity locally and in justified cases.

The proposed regulation of § 35c represents a value shift, taking into account the latest scientific knowledge concerning the harm caused by the use of fireworks to their surroundings. For details, see, for example, the conclusions of the 2023 expert opinion of the Czech Academy of Sciences entitled ‘*Fireworks: a toxic show with unbearable health risks*’,<sup>1</sup> which deals with the impact of pyrotechnics on human health and the environment. Ensuring the protection of the right to a favourable environment, as well as the protection of health, is one of the fundamental constitutional tasks of the State and thus of public authority (see Article 7 of the Constitution, Article 11(3), Article 31 and Article 35 of the Charter of Fundamental Rights and Freedoms). With regard to § 10(c) and § 35(2) of the Municipalities Act, municipalities also participate in ensuring the protection of these values in the exercise of their self-government.

The purpose of the regulation contained in § 35c is therefore to increase the power of municipalities to decide whether to completely prohibit the firing of pyrotechnic articles within their limits or only to restrict them proportionately. This is an explicit transfer of this political decision to municipal self-government, when it is perfectly legitimate not to regulate the given activity with a by-law at all (then the statutory minimum regulation will apply), or to merely restrict it (to stipulate, for example, the places and times when the firing of pyrotechnic articles is prohibited), or to decide to prohibit it completely.

A municipality now does not have to justify the introduction of complete prohibition through a by-law in any way, with reference to § 35c(1)(a). It is at the political discretion of the municipal council whether it decides to prioritise environmental protection over other interests in its territory or whether, taking into account local traditions, customs and attitudes of the local population, it will only restrict the use of pyrotechnic articles (e.g. it will reserve certain days of the year for their use, typically 5 December or New Year's Eve), or whether it will not regulate it at all.

Unlike the introduction of total prohibition, which is legitimate in a given context and by its nature cannot be discriminatory (it does not favour any person in the municipality) or unreasonable, in a situation where the municipality decides to adopt only temporal or territorial regulation in its territory, the chosen method and scope of regulation will have to be based on corresponding reasons (as in other cases). In other words, a temporal or territorial restriction on the use of

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<sup>1</sup> Expert opinion of the CAS 02/2023, FIREWORKS: A toxic show with unbearable health risks. June 2023 Available at: <https://www.avcr.cz/export/sites/avcr.cz/cs/veda-a-vyzkum/avex/files/2023-02.pdf>.



pyrotechnic articles must never be the manifestation of arbitrary or wilful action by a municipality. The chosen solution must not be discriminatory (e.g. favour certain groups of persons in the use of pyrotechnic articles without objective and rational reason) or unreasonable (manifestly absurd).

As hitherto, municipalities will not be able stipulate exemptions from regulation for specific event organisers in a by-law (including stipulation of an exemption from regulation for the municipality itself) or to introduce and grant exemptions from its regulation by means of individual acts (resolutions of the municipal council, by decisions in administrative proceedings for granting an exemption). Conclusions of the ruling of the Constitutional Court of 27. 7. 2021, case No Pl. ÚS 7/21 (Heřmanův Městec), remain unaffected by the new legislation.

§ 35c(2) emphasises that prohibition on the handling of pyrotechnic articles may also be laid down only for times or categories of pyrotechnic articles specified by the municipality. Municipalities may, for example, prohibit handling within their limits only in relation to category F3 and category F4 fireworks, which are not used to carry out fireworks activity, the performance of which is permitted under § 33.

§ 35c(3) now expressly specifies which categories of pyrotechnic articles may never be affected by the regulation contained in a by-law. In such cases, the municipality may also not rely on § 10(a) to (c) of the Municipalities Act; § 35c(3) is intentionally worded in very general terms, i.e. in such a way that it applies to all by-laws.

In particular, a by-law cannot regulate the handling of category F1 fireworks, for one because of their low hazard level and harmfulness (sparklers, crackling balls, confetti, etc.) and for another because Article 4(2) of Directive 2013/29/EU, in order to protect the free movement of goods within the EU internal market, does not allow national States (as opposed to other categories of pyrotechnic articles) to restrict or prohibit the use of category F1 fireworks.

Furthermore, the handling of pyrotechnic articles of categories F4 and T2 cannot be regulated in a by-law in a situation where they are used for the performance of fireworks activity, the performance of which is permitted under § 33 (*a contrario* in other cases, these categories of municipalities can regulate). Permission for fireworks activity pursuant to § 33(7) does not require fireworks activity carried out using pyrotechnic articles listed in Annex 3 to the Act.

This is due to the fact that this activity is subject to strict statutory and sub-statutory regulation contained in particular in § 32 and 33 and the relevant CMA decree. Fireworks can only be carried out on the basis of a permit issued by a DMA in administrative proceedings. In these proceedings, the municipality acts as a party to the proceedings and is therefore able to defend its interests in them; it is not ruled out that an application for a permit may be rejected precisely on the grounds that it would not be in accordance with the public interest defended by the municipality [§ 2(4) of the Administrative Code]. Pursuant to § 35(1) of the Municipalities Act, matters entrusted to administrative authorities as the exercise of state administration do not fall within the autonomous competence of municipalities.

The draft legislation prevents possible undesirable situations where, although the applicant would be allowed to carry out fireworks within the municipality under § 33, but despite the existence of such a permit it would not be possible because of a by-law that has been issued. However, in the light of the case-law of the Constitutional Court, such an undesirable situation cannot be ruled out under the current legislation [see, by analogy, point 29 of the ruling of 21. 10. 2008, case No Pl. ÚS 46/06 (Mariánské Lázně)].

§ 35c(4) governs the relationship between municipal by-laws issued pursuant to § 35c and the statutory prohibition on the handling of pyrotechnic articles contained in § 35b. The draft legislation is based on the principle that § 35b contains a minimum legal framework (standard) of regulation that applies to all of the Czech Republic. The municipality may then supplement this statutory regulation with a by-law by which it extends the prohibition handling pyrotechnic articles to the entire municipality or its individual parts (locations), or sets time restrictions.

Because, in many cases, municipalities will not be able to avoid a conflict with prohibitions already in force within their limits under § 35b [which, in view of § 35(3)(a) of the Municipalities Act, is a legally undesirable situation], a rule is constructed that in the event of duplication, i.e. the establishment of a prohibition in the by-law also for places where the prohibition under § 35b already applies, the municipal legislation is not taken into account (as if it did not exist here). In other words, only the prohibition that follows directly from the Act always applies to places defined in § 35b, regardless of what the by-law stipulates. At the same time, the by-law is not 'illegal' in establishing a duplicate prohibition for a place defined in § 35b. It could be unlawful only if it stipulated, for a place referred to in § 35b, that the handling of pyrotechnic articles was 'permitted' there.

#### Re: Point 47

The current Pyrotechnics Act incorrectly numbers individual Titles, when Title VI is followed by Title IX instead of Title VII. The subsequent Titles then follow Title IX. For this reason, the irregularity is corrected and these Titles are renumbered to follow Title VI.

#### Re: point 48

##### § 36

The CMA will conduct administrative proceedings with the applicant regarding the granting of authorisation. If the application is approved, the CMA grants the relevant authorisation and issues proof instead of a decision pursuant to § 151 of the Administrative Code. Otherwise, it shall reject the application. Only the applicant is a party to these proceedings.

The granting of an authorisation requires compliance with the substantive requirements referred to in paragraph (1). If they are fulfilled, the CMA shall grant the authorisation. There is therefore a legal right to be granted authorisation. The applicant must be at least 18 years of age, must have at least a primary education, must have full legal capacity, have integrity and be medically fit and, last but not least, must undergo professional training pursuant to § 38a and successfully pass the examination.

The current version of the Pyrotechnics Act requires the applicant to have at least a secondary education with a school-leaving certificate, regardless of the field of study. This provision made it impossible for natural persons who had not achieved this education to obtain a certificate of professional competence. Because a significant number of people with a lower education work in the field of pyrotechnic articles, it is stipulated that even those natural persons who have at least a primary education may apply for an authorisation.

The system for granting authorisations and the related issuance of proof of professional competence is changing. At present, a natural person who wants to obtain a certificate of professional competence must, after applying for this certificate at the CMA, undergo professional training and successfully pass an examination. For this reason, the CMA will suspend the proceedings until the applicant has completed the training and passed the examination. An application for professional training must then be submitted by the applicant to the CPHAA, which, together with the CMA, provides the training. This situation is very confusing for the applicant. The new regulation consists in the fact that the applicant first undergoes professional

training and passes the examination, and only then, if he successfully passes the examination, submits an application for the granting of authorisation to the CMA. This means that this authority will not have to interrupt the proceedings and wait to see whether the applicant successfully completes the training. For applicants, the new regulation will be much clearer and will allow them to orient themselves better in the entire situation.

Paragraph (3) regulates the particulars of the application or what is to be attached to the application. The current version of the Pyrotechnics Act requires, for example, the address of the employer and other requirements, which are, however, completely irrelevant for the issuance of the document. In addition to the general requirements under Act No 500/2004, the Administrative Code, as amended, the application must also include proof of education. The applicant also submits a medical opinion and a photograph that shows the applicant's appearance at the time of submission of the application and meets the requirements for taking a photograph for the issue of a temporary identity card. The application also includes proof of integrity pursuant to § 38b(4) and (5) and, if the applicant is a foreign national, a statutory declaration of legal capacity. As regards a medical opinion, proof of integrity or a statutory declaration of integrity [see § 38b(4) and (5)] and a statutory declaration of legal capacity, these elements of the application must not be older than 3 months on the date of submission of the application.

The authorisation for handling pyrotechnic articles is valid for five years after proof of professional competence has been issued. The date of issue of the document will be indicated on the document. The 5-year authorisation period is calculated from this date.

Authorisation for handling pyrotechnic articles is granted separately for category P2, then for categories F4 and T2 (this is common professional competence for these categories). A person who has been authorised to handle pyrotechnic articles of category P2 cannot handle pyrotechnic articles of category F4 and T2, while a person who has been authorised to handle pyrotechnic articles of category F4 and T2 (both categories are authorised) cannot handle pyrotechnic articles of category P2. Authorisation for handling category F3 pyrotechnic articles is then granted separately. For a person with professional competence, he/she may only handle pyrotechnic articles classified in the category for which he/she has been granted authorisation. An exception to this rule applies to persons who are professionally qualified for pyrotechnic articles of categories T2 and F4 and who, on the basis of that professional competence, may also handle pyrotechnic articles of category F3. If a person is professionally qualified to deal with the most dangerous categories, namely F4 and T2, that person may also be regarded as professionally qualified to deal with the less dangerous category F3. However, this does not apply vice versa.

### § 37

Only a person with professional competence and a business [§ 24(2)] may handle pyrotechnic articles of category F4, T2 or P2 [§ 24(1)]. Professional competence is also required for certain activities in respect of category F3. A business may handle these pyrotechnic articles only under the conditions laid down in § 24(3) and (5) (i.e. by ensuring that a person with professional competence handles these pyrotechnic articles).

A person with professional competence is a natural person who has been issued proof of professional competence [§ 3(e)] proving authorisation to handle pyrotechnic articles (hereinafter also 'authorisation').

Proof of professional competence is issued in three types, the first for the handling of pyrotechnic articles of category P2, the second for the handling of pyrotechnic articles of category T2 and F4 and the third for the handling of pyrotechnic articles of category F3, thus depending on which pyrotechnic articles the person is authorised to handle. In the latter case [pursuant to paragraph (1)

(b)], it is a document relating to pyrotechnic articles of both categories. The document is valid for five years from the date of issue. If the authorisation to handle pyrotechnic articles is revoked, the proof of professional competence shall lapse. The holder of the document is then obliged to return it to the CMA.

The document will take the form specified by the CMA in the decree.

#### § 38

A person with professional competence may extend the validity of their authorisation for an additional five years. In this case, it is necessary that at the earliest 6 months and at the latest 30 days before the expiry of the existing authorisation, the applicant submits an application for the issue of a new document or the renewal of the existing authorisation. In this case, the CMA now verifies only some facts that must be fulfilled in order for a new document to be issued and the authorisation to be renewed. The applicant must therefore submit, together with the application, a medical opinion and, if he or she is a foreign national, proof integrity, or a statutory declaration by which he or she declares integrity, and a statutory declaration of legal capacity. Again, these particulars of the application must not be older than 3 months on the date of submission of the application. In contrast to an application pursuant to § 36(3), no proof of education or of payment of an administrative fee is submitted (the submission of such an application is not subject to a fee). However, if the applicant did not submit the application within the specified time frame (or submitted this application less than 30 days before the expiry of the existing document, or not until after its expiry), this does not prevent the applicant from being issued with a new document again, but the application must now comply with the requirements set out in § 36(3), including the payment of an administrative fee. In this case, it is now necessary to grant a new authorisation. However, they shall not be required to re-train pursuant to § 38a.

If the proof of professional competence is stolen from the holder, or is damaged, destroyed or lost, the CMA will issue a duplicate if the holder so requests.

#### Re: Point 49

##### § 38a

According to the current version of the Pyrotechnics Act, professional training is intended for applicants to obtain a certificate of professional competence. Anyone who submits an application to the CMA may participate in professional training. The draft Act changes this practice (see above) and it is necessary to participate in professional training before submitting an application for proof of professional competence. Professional training is provided by CPHAA in cooperation with CMA. The scope and duration of the professional training and the plan of the theoretical and practical part of the professional training is stipulated by the Ministry of Industry and Trade by decree.

Professional training, which is a condition for obtaining professional competence, commences under the current regulation if at least 5 applications for participation in this training are submitted and it is announced by the CPHAA. In relation to those interested in training, however, this is not a fully satisfactory regulation, as professional training cannot be started until the statutory number of applicants has been met. Since the number of candidates was the only legal condition for the announcement of the training, in the case of a small number of candidates in a particular calendar year, the training did not have to start at all. On the basis of the draft amendment, the CPHAA must commence professional training in a calendar year for each relevant category of pyrotechnic articles for which professional competence is required (F3, F4, T2, P2), at least once a year, provided that it receives at least one application. If this obligation is fulfilled, it is up to the CPHAA whether additional training will be commenced in the same calendar year. Naturally, the number of candidates will be the decisive factor for the number of training sessions in a given

calendar year. This new legislation gives those interested in training the assurance that at least one training session will commence in the relevant calendar year, even if only one candidate would have expressed an interest in it. The CPHAA announces the date of professional training by publishing it on its website. The date must be published at least 30 days before it commences. All information about the professional training, i.e. the date, venue, contact details of the training site and organizational instructions, will be published by the CPHAA on its website.

Professional training consists of theoretical and practical part.

Professional training ends with an examination verifying the acquired professional knowledge. The examination has a written, oral and practical part according to the Examination Rules, which are laid down by the Ministry of Industry and Trade by decree. If the candidate fails the exam, he/she may repeat the test at most twice. The entire exam is always repeated. The CPHAA announces the dates of repeated examinations no later than 6 months from the date on which the candidate failed the examination.

The Act stipulates that the examination committee has four members. At present, according to Decree No. 284/2016, it has only three members, with one representative (the examination committee Chair) appointed by the CMA and two members by the CPHAA. As before, the Chair of the Examination Committee will be appointed by the CMA. In the event of a tie, the Chair shall have the casting vote. Although the CMA is still the body issuing the certificate of professional competence, its representation on the examination committee is not numerically sufficient. This led to the aforementioned change to the Act.

To implement § 38, the Ministry of Industry and Trade shall issue a decree specifying the length and content of the theoretical and practical part of the vocational training and the examination rules. The examination rules shall specify the content of the individual parts of the examination, the method of evaluation and notification of the result of the examination and the details of the report on the result of the examination.

#### § 38b

One of the conditions for obtaining professional competence (and subsequent renewal) is the condition of integrity.

The Pyrotechnics Act stipulates who is considered to have integrity for the purposes of granting authorisation, or rather stipulates who is not considered to have integrity.

The Act does not consider that a person who has been convicted by a final judgment of a criminal offence committed intentionally, if he or she has been sentenced for this criminal offence to an unconditional custodial sentence of at least one year, or if he or she has been convicted of an intentional offence constituting a particularly serious crime [§ 14(3) of the Criminal Code] to have integrity, and therefore authorisation for the handling of pyrotechnic articles of category F3, F4, T2 or P2 shall not be granted or renewed. A person who has been convicted with finality for an offence committed in connection with the use or other handling of explosives, military material, ammunition, munitions or pyrotechnic articles shall also not be considered to have integrity, unless such a person is regarded as not having been convicted. These are therefore criminal offences committed in relation either directly to pyrotechnic articles or to articles that are close to pyrotechnic articles in certain respects. In the case of these criminal offences, it is irrelevant whether the offence was intentional or negligent, or what penalty was imposed.

In order to ensure the applicant's integrity, the CMA will request an extract from the criminal record if the applicant is not a foreigner. According to Act No 269/1994 on the Criminal Register,

it is necessary for a foreigner to apply for an extract from the Criminal Register in person. Proof of integrity may be furnished by means of a document similar to an extract from the criminal record issued by the State of which the foreign national is a citizen or by means of an extract from the criminal record with an annex containing information entered in the criminal record of the Member State. However, the foreign national can replace this document with a statutory declaration declaring integrity within the meaning of this Act. This should be used in particular in cases where the State of which the foreign national is a citizen does not issue such a document.

Re: points 50, 51, 52, 53, 54 and 55

§ 39(1) to (4)

In view of the fact that the CMA will grant authorisation for the handling of pyrotechnic articles of categories F3, F4, T2 and P2, which will be proven by proof of professional competence, instead of the simultaneous issue of a certificate of professional competence (which also included the said authorisation), it is necessary to amend § 39 in this sense. Where § 39 refers to a person holding a certificate of professional competence, it is stipulated, in accordance with § 3(f), that this is a person with professional competence.

As the validity of the certificate of professional competence will now be limited to 5 years (a new document will then be issued if the statutory requirements are met), § 39(5) of the current version of the Pyrotechnics Act becomes redundant and is therefore deleted. The question of loss of medical fitness during the period of validity of the document is governed by § 39(3)

Re: points 56, 57 and 58

§ 40

The reason for revoking authorisation is modified, the reason being, as in the current regulation of the Pyrotechnics Act, the applicant's failure to fulfil the conditions for its granting (it is sufficient to fail to fulfil one of these conditions). The reason will no longer be the failure to submit a medical opinion to the CMA within 5 years of the date of issue of the previous medical opinion, which is related to the fact that the authorisation or proof of professional competence will be issued only for a limited period of time, namely 5 years. The issue of new proof of professional competence will be contingent on the submission of a new medical opinion. If this opinion is not submitted, no new proof of professional competence will be issued after the original proof of professional competence expires. It is also specified that the CMA is obliged to notify a decision revoking authorisation to the Trade Licensing Office, and it is now stipulated that this obligation applies only if the holder is also the holder of a trade licence. Since the application for authorisation will no longer be accompanied by the address of the employer if the applicant is an employee, the CMA will also not be obliged to notify the employer.

Re: points 59, 60, 61, 62, 63 and 64

§ 41

In connection with changes to the legislation concerning authorisations and proof of professional competence (which replaces the currently used certificate of professional competence), the legislation concerning the list of persons with professional competence maintained by the CMA is also being amended. It is stipulated that the CMA shall provide the data referred to in paragraph (2) to the competent authorities. In addition to the aforementioned provision to the competent authorities, the CMA will publish, in anonymised form, data on the validity and scope of the authorisation, including the document number, on its website.

Re: Point 65

§ 42(2)

In § 42(2), the words 'in a manner allowing remote access' are replaced by the words 'on its website'. These provisions require the notifying authority to publish certain information in a

manner allowing remote access. This amendment will thus precisely define the place of publication, i.e. on the website of the notifying authority (OSMT). If the words ‘allowing remote access’ were used, such information could effectively be published anywhere on the internet.

Re: point 66

§ 43(1)

This provision is currently worded inaccurately when it states that a notified body must be independent of an economic operator and a person with professional competence, and must have no relationship to the pyrotechnic article it assesses. The independence from a person with professional competence is deleted in the draft Act, because they as such cannot have the conformity of a pyrotechnic article assessed. This can only be done by the manufacturer (or the importer) as an economic operator. It is also inaccurately stated in the current version of the Act that the notified entity must have no relationship to the pyrotechnic article it assesses, and it is added that independence applies to the economic operator whose pyrotechnic article it assesses and involves independence from that pyrotechnic article. Such wording better corresponds to Article 25(3) of Directive 2013/29/EU.

Re: point 67

§ 43(4)(c)

In the context of the corrigendum to Directive 2013/29/EU, published in Official Journal of the European Union L 38 of 10 February 2018, replacing the word ‘kind’ with ‘type’ in the text of Directive 2013/29/EU, in order to maintain consistency of concepts, this amendment also needs to be made to the Pyrotechnics Act.

Re: Point 68

§ 43(6)

In view of Official Journal of the European Union L 38/42 of 10 February 2018, which published a corrigendum to Directive 2013/29/EU, according to which, in the first sentence of the first subparagraph of Article 6(1) of that directive, the words ‘degree of hazard’ are replaced by the words ‘level of hazard’ (this article of the directive is transposed into Czech law by § 4 of the Pyrotechnics Act), it is appropriate to reflect this corrigendum in § 43(6) and to replace ‘degree of hazard’ by the words ‘level of hazard’.

Re: point 69

§ 51

§ 51, which sets out the list of state administration executors pursuant to the Pyrotechnics Act, is amended. The Ministry of Industry and Trade has not yet been included among these executors; in particular, it issues decrees for the implementation of the law. Municipal authorities, which will deal with some infractions, are now included in the list of authorities executing state administration

Re: paragraphs 70, 71, 72, 73, 74 and 75

§ 52

In connection with the fact that the supervisory activities of the CPHAA should be now carried out by the CTIA, CMA and DMA, the activities of the CPHAA in connection with this supervisory activity are being modified. The CPHAA will thus no longer decide on the prohibition of further handling of pyrotechnic articles if they do not fulfil the conditions for placing on the market under the Pyrotechnics Act, and on the withdrawal of pyrotechnic articles from the market due to a technical defect if it finds a demonstrable threat to the health or safety of their users [current § 52(1)(b)]. These activities will now be carried out by the aforementioned supervisory authorities.

Otherwise, the provisions of § 52 remain unchanged.

Re: point 76

§ 52a

There is a change of supervisory bodies, where instead of the CPHAA, the control of compliance with obligations, unless the Pyrotechnics Act stipulates otherwise, will be carried out by the CTIA, which will thus become the main supervisory authority. Only where another authority is expressly mentioned, such supervision shall be exercised by that other authority.

Re: points 77, 78 and 79

§ 53(a), (d) and (f)

The certificate of professional competence is being replaced by authorisation for handling pyrotechnic articles.

The CMA already exercises its competence under the Pyrotechnics Act, in particular in connection with issuing proof of professional competence. However, it will now also carry out supervision in the field of pyrotechnic articles of categories F3, F4, T2 or P2 in the case of certain obligations of economic operators (i.e. not those of other entities). Supervision of these pyrotechnic articles as regards the obligations of economic operators will be split between the DMA, which will check compliance with the obligations under §§ 24 to 31, and the CMA, which will check compliance with the obligations under § 10 and §§ 12 to 23. The CTIA is therefore completely exempt from supervision over pyrotechnic articles of these categories (see § 52a).

Re: paragraphs 80 and 81

§ 54

In subparagraph (a) fireworks activity is merely made singular. In subparagraph (b), the scope of supervision is modified. The DMA already perform supervision in accordance with the current version of the Pyrotechnics Act, namely in the field of fireworks. This supervisory power in this case remains and is extended to the supervision of fireworks and pyrotechnic articles of category F3, F4, T2 or P2, to the extent of the obligations incumbent on economic operators in relation to these pyrotechnic articles, which are set out in §§ 24 to 31. This thus involves checking whether economic operators are handling pyrotechnic articles of category F3, F4, T2 or P2 in accordance with this Act. In the case of other pyrotechnic articles (i.e. not categories F3, F4, T2 or P2), other entities (i.e. not economic operators) or other obligations (i.e. not obligations referred to in §§ 24 to 31), the DMA is not a supervisory authority.

Re: Point 82

§ 54a

The notifying authority (OSMT) is also the supervisory authority with regard to the obligations of notified entities. It also carries out notifications of notified entities under the existing version of the Pyrotechnics Act.

Re: Point 83

The provision of § 55 that established inspection bodies for the performance of inspections pursuant to the Pyrotechnics Act is deleted. The inspection authorities are changed (see the amending points above) and these inspection powers have been added to the already existing provisions laying down powers for authorities that exercise state administration under this Act, or new provisions have been created (such as § 54a concerning municipalities with extended competence). § 55 is therefore superfluous.

Re: points 84, 85, 86, 88, 89, 90, 91, 93 and 94

§ 56(1), (2), (3) and (5) + heading, § 57(1), § 59(1), (3), (4) and (5) and § 61(1) and (2)



In connection with the change of supervisory bodies, the above provisions of the Pyrotechnics Act are amended, where the CPHAA is replaced by the CTIA and CMA [and in the heading of § 56 also by the DMA, in connection with the newly inserted § 56(7)]. The general part of the explanatory memorandum discusses the change of supervisory authorities in more detail.

Re: points 85, 88 and 93

§ 56(1), § 57(1) and § 61(1)

The current version of the Pyrotechnics Act directs supervisory activities not only to economic operators, but also to persons with professional competence. Such surveillance activities may result in the imposition of corrective measures to prevent the further spread of harmful pyrotechnic articles on the market, i.e. products that do not comply with the requirements of the Pyrotechnics Act, or pyrotechnic articles that do comply with those requirements, yet pose a risk to users. The imposition of such measures is justified for economic operators (manufacturers, importers, distributors) as they act as actors in the supply chain and distribute these pyrotechnic articles in the course of their commercial activity. However, the current Pyrotechnics Act incorrectly considers as such entities persons with professional competence as such, but who, as natural persons, are not in the position of economic operators, so they cannot be subject to remedial measures (in essence, a person with professional competence differs from any other consumer only in that they can handle pyrotechnic articles of category F3, F4, T2 or P2). Precisely because a person with professional competence does not make pyrotechnic articles available on the market, they cannot be subject to corrective measures, which can only be imposed on operators who make pyrotechnic articles available on the market (economic operators). If a person with professional competence is at the same time an economic operator, as a sole trader, those remedial measures (if necessary) are imposed on them precisely because they are an economic operator (not a person with professional competence).

Re: Point 87

§ 56(7)

A new § 56(7) is inserted, which is related to the supervisory activities of the DMA pursuant to § 54(b). As opposed to the current version of the Pyrotechnics Act, they will check not only the fulfilment of obligations related to fireworks, but also the obligations of economic operators relating to pyrotechnic products of categories F3, F4, T2 or P2, which are listed in § 24 to 31. Based on this provision, the DMA will be able to take corrective measures if it finds that an economic operator fails to comply with the obligations referred to in §§ 24 to 31 in the case of pyrotechnic articles of categories F3, F4, T2 or P2. In cases where it is not possible to use a more lenient remedy, the DMA will be able to order the destruction of the pyrotechnic article.

Re: Point 92

§ 60

The Act will allow the supervisory authorities (CTIA and DMA) to seize these pyrotechnic articles in the event of a suspected infraction, until a decision has been made on whether an infraction has occurred and the penalty of forfeiture of these pyrotechnic articles has been imposed. This procedure may be applied only in the case of pyrotechnic articles of categories F3, F4, T2 and P2.

This measure will only be applicable if there is a suspicion that there is a serious breach of the Pyrotechnics Act (sale to persons who are under age or are not persons with professional competence and sale of pyrotechnic articles where their sale is prohibited).

Decision-making on an offence is usually a longer-term process and without the possibility of preliminary seizure pyrotechnic articles, it is practically impossible to seize them later only on the basis of the decision on the offence, because the person who committed such an offence no longer

has these pyrotechnic articles. Their preliminary seizure will make it possible for the penalty of confiscation of pyrotechnic articles to be imposed. If the infraction is not proven, the pyrotechnic articles will be returned.

Re: point 95  
§ 62(3)(d)

A notified entity shall be required to notify the notifying authority of any refusal, restriction, suspension or withdrawal of certificates. This information is relevant for the notifying authority because it is a restriction of the conformity assessment entity whose products they assessed are on the market. On the contrary, the obligation originally laid down to notify and issue the certificate is abolished, as it is not a restriction of the conformity assessment entity. Such information is then not relevant for the notifying authority.

Re: point 96  
§ 63, § 64, § 65 and § 65a

In connection with the amendment of the Pyrotechnics Act, the structure of infractions is adjusted, infractions are added for obligations that were missing in the current Pyrotechnics Act, making these obligations unenforceable, and infractions are added for the new obligations.

The competence of the individual authorities to deal with infractions is defined. As regards infractions committed by natural persons for handling pyrotechnic articles of category F4, T2 or P2, it can be expected, according to a qualified estimate, that there will be dozens of cases.

The rates of fines set in relation to individual offences are generally based on an assessment of the seriousness of the tort/delict, the interest that may be affected by the commission of the infraction, while assessing the severity of the possible financial consequences for the persons who may commit the tort/delict. At the same time, the reasons for penalising illegal activity aimed at preventing such illegal activity were taken into account when setting the amount of the fines. The principle of determining the amount of fines is apparent, for example, from a comparison of an infraction under § 64(2)(d), according to which an economic operator commits an infraction by failing to ensure, contrary to § 10(3), that the product it has made available on the market is accompanied by an EU declaration of conformity, with an infraction under § 64(3)(r) committed by a manufacturer who, contrary to § 19(4), fails to ensure that the pyrotechnic article is accompanied by instructions for use or fails to ensure that the instructions for use and other markings are in the Czech language and in the prescribed form. Both proposed infractions are based on the protection of the same interest, which is, inter alia, the interest in ensuring that the persons concerned are properly informed. The administrative authority may therefore impose a fine of up to CZK 100,000 for both offences. However, the Act also contains infractions resulting in consequences of significantly higher intensity (in the area of safety, life, health), with which the Act naturally associates higher fines – for example, the infraction stipulated in § 64(1)(c) committed by a manufacturer who, contrary to § 18(1) or (2), places on the market a pyrotechnic article for which conformity has not been assessed or fails to ensure that, when pyrotechnic articles are placed on the market, those articles are designed and manufactured in accordance with the basic safety requirements. For committing this infraction, the administrative authority may impose a fine of up to CZK 5,000,000. When determining the amount of the fine in specific cases, the fact whether it is an isolated breach of the law or repeated, the intensity of the subjective aspect of the offence or the question of the extent of the harm suffered will be taken into account.

Under § 65, administrative authorities shall deal with offences within the scope of their powers under §§ 52a to 54a. An exception is made only for certain offences for which no administrative

authority is competent under §§ 52a to 54a as regards the exercise of supervision (or surveillance). These specified infractions will then be dealt with by the DMA and CTIA.

As regards infractions consisting in a breach of an obligation arising from the prohibition on handling pyrotechnic articles in the protective zone (§ 35b) or from a by-law (§ 35c), these infractions will be dealt with in delegated competence by the municipal authorities of the municipalities where such a breach took place (and in the event of a breach of a by-law, provided that such a by-law has been issued). However, if there are infractions in connection with pyrotechnic articles of category F3, F4, T2 or P2, the district mining authority will also be competent to deal with such infractions. In these cases, therefore, it will be a shared competence of municipal authorities and district mining authorities. The administrative authority which is the first to deal with the infraction shall immediately inform the other competent administrative authority.

§ 65a stipulates the competence and competence of the Police of the Czech Republic to impose a fine by order on the spot for infractions consisting in a breach of obligations arising from the prohibition of handling pyrotechnic articles in the protective zone (§ 35b) or in a by-law (§ 35c). If an authority of the Police of the Czech Republic finds that circumstances indicate that such an offence has been committed, they shall proceed in accordance with § 74 of Act No 250/2016 on liability for infractions, as amended.

#### Re: point 97

##### Annex 2

Annex 2 is replaced by a new text which, however, corresponds to the current Annex 2. However, it seems problematic that the annex is numbered differently in the Act than it is in Directive 2013/29/EU. This different numbering then causes difficulties, for example, in the conformity assessment of pyrotechnic articles, where the relevant technical standards refer to individual provisions of the Annex to Directive 2013/29/EU, but this is not reflected in the numbering in the Act. It is therefore desirable that the numbering of the Annex to the Act corresponds to the numbering of the Annex to Directive 2013/29/EU.

#### Re: Point 98

##### Annex 4

The newly inserted Annex 4 sets out the requirements for the fire safety of a warehouse and the requirements for the storage of pyrotechnic articles in a warehouse. These are requirements that are now set out in Decree No 248/2016 implementing certain provisions of the Pyrotechnics Act. These requirements will now be part of the Act.

#### **Re: Article II**

A transitional provision is introduced in relation to proof of professional competence. According to the transitional provision, certificates that were issued before the effective date of this Act (including certificates issued under Act No 156/2000) shall be considered proof under this Act. Proof of professional competence for handling pyrotechnic articles of categories T2, P and F4 is also considered to be a fireworks technician's authorisation or ID, issued by the CMA or DMA. Holders of the above-mentioned certificates, authorisations or IDs may thus handle pyrotechnic articles of categories F4 and T2 pursuant to the Pyrotechnics Act, as amended by the proposed Act, but in connection with the introduction of the period of validity of the certificate of professional competence, they shall expire 5 years after the date of submission of the medical opinion pursuant to § 37(1) of Act No 206/2015, as amended prior to the effective date of this Act. However, if the certificate holder submitted a medical opinion to the CMA in the last 5 years prior

to the effective date of this Act, the certificate shall expire 5 years from the date of submission of this certificate. All invalid certificates are deemed to have been revoked.

Furthermore, the transitional provision stipulates that proceedings initiated under the Pyrotechnics Act as amended prior to the effective date of the draft Act shall be completed under the Pyrotechnics Act in its current version.

The transitional provision also restricts the supply of certain pyrotechnic articles, namely those the supply of which is now permitted under Article II(1) of Part One of Act No 148/2010. This Act transposed into Czech law Directive 2007/23/EC of the European Parliament and of the Council on the placing on the market of pyrotechnic articles, which was the first harmonised regulation in the field of pyrotechnic articles (later replaced by Directive 2013/29/EU). That directive categorised, inter alia, pyrotechnic articles, setting an age limit for each category, which had to be reached in order to be able to sell a pyrotechnic article to a person. At the time when there was no harmonised regulation in the field of pyrotechnic articles, Decree No 174/1992, which was in force at that time, classified pyrotechnic articles into classes and subclasses. Act No 148/2010, which adopted harmonised rules in the field of pyrotechnic articles, allowed pyrotechnic articles in Classes I and II to be placed on the market until 3 July 2013, pyrotechnic articles in Classes III and IV and subclasses T0, T1 and T2 until 3 July 2016. After those dates, pyrotechnic articles placed in classes could no longer be placed on the market, but it was still possible to make them available on the market (that is to say, in particular to sell them) if they had been placed on the market by that date. This ensured that economic operators were able to switch to a harmonised regime that categorised pyrotechnic articles and laid down their own requirements for pyrotechnic articles. For a certain period of time, in addition to the harmonised product, products classified in classes and subclasses under the then legislation could thus be made available on the market. The transitional provision limited the period during which pyrotechnic articles classified in classes and subclasses could be placed on the market, but the products thus made available on the market could continue to be made available on the market indefinitely. In the current situation, this means that pyrotechnic articles classified in classes and subclasses can still be made available on the market if they have been placed on the market by the specified date. However, this situation is at odds with the current harmonised regulation, which foresees making available on the market only pyrotechnic articles that meet the requirements of this harmonised regulation, including categorisation. Therefore, the present Act allows the supply of pyrotechnic articles classified in classes and subclasses only until 1 January 2025, thus preventing any pyrotechnic articles classified in classes and subclasses from being sold more than 9 or 6 years after their placing on the market. After that date, it will no longer be possible to make those pyrotechnic articles available on the market.

### **Re: Article III**

The Administrative Fees Act in the Annex, Part I, item 22(r) sets out an administrative fee of CZK 1000 for the receipt of an application for authorisation to handle pyrotechnic articles under the Pyrotechnic Articles Act. The currently applicable legislation of the Pyrotechnics Act provides for the issuance of this authorisation for an indefinite period, with the holder of the authorisation being obliged to submit a medical opinion to the CMA every five years [§ 37(1) of the current version]. The draft Act amends this and now these authorisations are to be issued only for a period of 5 years, with the proviso that at the earliest 6 months and at the latest 30 days before the expiry of this document, the holder of the authorisation may apply for its renewal [§ 37(7) of the Pyrotechnics Act, as amended].

Part II, item 32(a) to (i), sets out fees related to activities under the Act on the Proofing of Firearms and Ammunition. Reference to this Act is now made in those points by means of a footnote (footnote 31). This footnote is now replaced by the mention of this Act in individual

points. For this reason, the existing text of the individual points is replaced by a new text containing the title in words of the above-mentioned Act.

In Part II, item 32(g), in the new version, the fee (as opposed to the identical provision in the current version) for issuing a decision confirming the validity of the certificate of conformity assessment of a pyrotechnic article is removed, the amount of this fee should have been 50% of the rate of the fees referred to in points (a) to (f) [mentioned point (g) applies to activities other than deciding on the validity of the certificate]. As points (a) to (f) do not contain any item relating to the issuing of a decision confirming the validity of a certificate of conformity assessment for a pyrotechnic article from which a 50% rate for its extension would be determined, this fee for such extension is removed.

In Part II, item 32, points (j), (k), (l) and (m) are added.

#### **Re: Article IV**

##### Amendment to the Market Surveillance Act

On 6 April 2023, the Act on Market Surveillance of Products entered into force, which sets out in its annex a list of supervisory authorities in relation to the individual EU regulations covered by this Act as regards the supervision of products covered by these regulations. Since the Market Surveillance Act also applies to pyrotechnic articles, the requirements of which are laid down in Directive 2013/29/EU, the annex to the Market Surveillance Act also contains surveillance authorities that check these requirements. Currently, only the CTIA is listed for Directive 2013/29/EU. Since the Pyrotechnics Act now also provides for the CMA as a supervisory authority (for pyrotechnic articles of category F3, F4, T2, P2) to check the requirements covered by the Market Surveillance Act and to provide for corrective measures in the event of non-compliance, it is necessary to amend the Annex to the Market Surveillance Act in such a way that the CMA is also indicated as a supervisory authority in relation to Directive 2013/29/EU (which is transposed by the Pyrotechnics Act).

#### **Article V**

This law was notified to the EU Commission and the Member States in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

#### **Re: Article IX**

This Act comes into effect on 1 December 2024. The effective date from 1 December 2024 (and not from 1 January 2025) is set taking into account that the busiest period of the year for pyrotechnic articles is the night from 31 December to 1 January. The amendment to the Pyrotechnics Act introduces certain measures to help prevent, in particular, the illegal sale and use of pyrotechnic articles of category F4, in particular by providing for more effective supervision of such articles (see, in particular, the general part of the statement of grounds) and also by providing for offences committed by natural persons and corporate entities that are not professionally qualified to handle such pyrotechnic articles, or in the case of a corporate entity do not use a person with professional competence for such handling. At the same time, December is the period when the greatest sales of pyrotechnic articles take place, thus also the greatest illegal sales of pyrotechnic articles of category F4. In order for the amendment to the Pyrotechnics Act to have a positive impact on the upcoming New Year's celebrations, it is appropriate to set the effective date as early as 1 December 2024.

