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* **VANHA- teksti vain seuraa UUTTA asiakohtaisesti, eikä aina artiklakohtaisesti.**
 | * **Punaisella – lisäys/muutos ao. kohtaan.**
* **Keltainen - vain helpottamaan tekstien vertailua**
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| **VANHA 428/2009** | **UUSI 428/2009** |
| **CHAPTER I****SUBJECT AND DEFINITIONS*****Article 1***This Regulation sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. | **CHAPTER I****SUBJECT AND DEFINITIONS*****Article 1***This Regulation sets up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items. |
| ***Article 2*** For the purposes of this Regulation:1. ‘dual-use items’ shall mean items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

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| 2. | ‘export’ shall mean:

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| (i) | an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92 (the Community Customs Code); |

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| (ii) | A re-export within the meaning of Article 182 of that Code but not including items in transit; and |

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| (iii) | transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community; it includes making available in an electronic form such software and technology to legal and natural persons and partnerships outside the Community. Export also applies to oral transmission of technology when the technology is described over the telephone;  |

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| 3. | ‘exporter’ shall mean any natural or legal person or partnership:

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| (i) | on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Community. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Community; |

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| (ii) | which decides to transmit or make available software or technology by electronic media including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community. |

Where the benefit of a right to dispose of the dual-use item belongs to a person established outside the Community pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Community; |

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| 4. | ‘export declaration’ shall mean the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure; |

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| 5. | ‘brokering services’ shall mean:

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| — | the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or |

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| — | the selling or buying of dual-use items that are located in third countries for their transfer to another third country. |

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion; |

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| 6. | ‘broker’ shall mean any natural or legal person or partnership resident or established in a Member State of the Community that carries out services defined under point 5 from the Community into the territory of a third country; |

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| 7. | ‘transit’ shall mean a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community; |

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| 8. | ‘individual export authorisation’ shall mean an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items; |

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| 9. | ‘Community General Export Authorisation’ shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions of use as listed in Annex II; |

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| 10. | ‘global export authorisation’ shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and/or in one or more specified third countries; |

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| 11. | ‘national general export authorisation’ shall mean an export authorisation granted in accordance with Article 9(2) and defined by national legislation in conformity with Article 9 and Annex IIIc; |

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| 12. | ‘customs territory of the European Union’ shall mean the territory within the meaning of Article 3 of the Community Customs Code; |

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| 13. | ‘non-Community dual-use items’ shall mean items that have the status of non-Community goods within the meaning of Article 4(8) of the Community Customs Code. |

 **CHAPTER II****SCOPE*****Article 3***1.   An authorisation shall be required for the export of the dual-use items listed in Annex I.2.   Pursuant to Article 4 or Article 8, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I. ***Article 4***1.   An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons.2.   An authorisation shall also be required for the export of dual-use items not listed in Annex I if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use. For the purposes of this paragraph, ‘military end-use’ shall mean:

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| (a) | incorporation into military items listed in the military list of Member States; |

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| (b) | use of production, test or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the abovementioned list; |

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| (c) | use of any unfinished products in a plant for the production of military items listed in the abovementioned list. |

3.   An authorisation shall also be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for use as parts or components of military items listed in the national military list that have been exported from the territory of that Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State.4.   If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraphs 1, 2 and 3, he must notify the authorities referred to in paragraph 1, which will decide whether or not it is expedient to make the export concerned subject to authorisation.5.   A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.6.   A Member State which imposes an authorisation requirement, in application of paragraphs 1 to 5, on the export of a dual-use item not listed in Annex I, shall, where appropriate, inform the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities.7.   The provisions of Article 13(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.8.   This Regulation is without prejudice to the right of Member States to take national measures under Article 11 of Regulation (EEC) No 2603/69.***Article 5***1.   An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authorities of the Member State in which he is resident or established that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1). If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he must notify the competent authorities which will decide whether or not it is expedient to make such brokering services subject to authorisation.2.   A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).3.   A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1).4.   The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 2 and 3 of this Article.***Article 6***1.   The transit of non-Community dual-use items listed in Annex I may be prohibited by the competent authorities of the Member State where the transit occurs if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1). When deciding on such a prohibition the Member States shall take into account their obligations and commitments they have agreed to as parties to international treaties or as members of international non-proliferation regimes.2.   Before deciding whether or not to prohibit a transit a Member State may provide that its competent authorities may impose in individual cases an authorisation requirement for the specific transit of dual-use items listed in Annex I if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).3.   A Member State may extend the application of paragraph 1 to non-listed dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2).4.   The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 2 and 3 of this Article.***Article 7***This Regulation does not apply to the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of persons.. (vrt. Uusi 2 artikla 3c-kohta, uusi 6 artikla 2c –kohta)***Article 8***1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security or human rights considerations.
2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1 immediately after their adoption and indicate the precise reasons for the measures.
3. Member States shall also immediately notify the Commission of any modifications to measures adopted pursuant to paragraph 1.
4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the Official Journal of the European Union.

**CHAPTER VIII****OTHER PROVISIONS*****Article 22***1.   An authorisation shall be required for intra-Community transfers of dual-use items listed in Annex IV. Items listed in Part 2 of Annex IV shall not be covered by a general authorisation.2.   A Member State may impose an authorisation requirement for the transfer of other dual-use items from its territory to another Member State in cases where at the time of transfer:

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| — | the operator knows that the final destination of the items concerned is outside the Community, |

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| — | export of those items to that final destination is subject to an authorisation requirement pursuant to Articles 3, 4 or 8 in the Member State from which the items are to be transferred, and such export directly from its territory is not authorised by a general authorisation or a global authorisation, |

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| — | no processing or working as defined in Article 24 of the Community Customs Code is to be performed on the items in the Member State to which they are to be transferred. |

3.   The transfer authorisation must be applied for in the Member State from which the dual-use items are to be transferred.4.   In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 11, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.5.   A Member State which adopts legislation imposing such a requirement shall inform the Commission and the other Member States of the measures it has taken. The Commission shall publish this information in the C series of the *Official Journal of the European Union*.6.   The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the Community, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the territory of the Community.7.   Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same items to third countries.8.   Documents and records of intra-Community transfers of dual-use items listed in Annex I shall be kept for at **least three years** from the end of the calendar year in which a transfer took place and shall be produced to the competent authorities of the Member State from which these items were transferred on request.9.   A Member State may, by national legislation, require that, for any intra-Community transfers from that Member State of items listed in Category 5, Part 2 of Annex I which are not listed in Annex IV, additional information concerning those items shall be provided to the competent authorities of that Member State.10.   The relevant commercial documents relating to intra-Community transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the Community. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note.***Article 9***1.   A Community General Export Authorisation for certain exports as set out in Annex II is established by this Regulation.2.   For all other exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established. Subject to the restrictions specified in paragraph 4, this authorisation may be an individual, global or general authorisation.All the authorisations shall be valid throughout the Community.Exporters shall supply the competent authorities with all relevant information required for their applications for individual and global export authorisation so as to provide complete information to the national competent authorities in particular on the end user, the country of destination and the end use of the item exported. The authorisation may be subject, if appropriate, to an end-use statement.***(Article 9…)***3.   Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.***(Article 9…)***4.   National general export authorisations shall:

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| (a) | exclude from their scope items listed in part 2 of Annex II; |

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| (b) | be defined by national law or practice. They may be used by all exporters, established or resident in the Member State issuing these authorisations, if they meet the requirements set in this Regulation and in the complementary national legislation. They shall be issued in accordance with the indications set out in Annex IIIc. They shall be issued according to national law or practice;Member States shall notify the Commission immediately of any national general export authorisations issued or modified. The Commission shall publish these notifications in the C series of the *Official Journal of the European Union*; |
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| (c) | not be used if the exporter has been informed by his authorities that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in paragraphs 1 and 3 of Article 4 or in paragraph 2 of Article 4 in a country subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations, or if the exporter is aware that the items are intended for the abovementioned uses. |

5.   Member States shall maintain or introduce in their respective national legislation the possibility of granting a global export authorisation.6.   Member States shall supply the Commission with a list of the authorities empowered to:

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| (a) | grant export authorisations for dual-use items; |

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| (b) | decide to prohibit the transit of non-Community dual-use items under this Regulation. |

The Commission shall publish the list of these authorities in the C series of the *Official Journal of the European Union*.***Article 10***1. Authorisations for brokering services under this Regulation shall be granted by the competent authorities of the Member State where the broker is resident or established. These authorisations shall be granted for a set quantity of specific items moving between two or more third countries. The location of the items in the originating third country, the end-user and its exact location must be clearly identified. The authorisations shall be valid throughout the Community.

2.   Brokers shall supply the competent authorities with all relevant information required for their application for authorisation under this Regulation for brokering services, in particular details of the location of the dual-use items in the originating third country, a clear description of the items and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.3.   Member States shall process requests for authorisations for brokering services within a period of time to be determined by national law or practice.4.   Member States shall supply the Commission with a list of the authorities empowered to grant authorisations under this Regulation for the provision of brokering services. The Commission shall publish the list of these authorities in the C series of the *Official Journal of the European Union*.***Article 11***1. If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not listed in Annex II or to any destination in the case of dual-use items listed in Annex IV are or will be located in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authorities of the Member State to which the application for authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

If no objections are received within 10 working days, the Member State or States consulted shall be regarded as having no objection.In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.2.   If an export might prejudice its essential security interests, a Member State may request another Member State not to grant an export authorisation or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within 10 working days. In case the requested Member State decides to grant the authorisation, this should be notified to the Commission and other Member States using the electronic system mentioned in Article 13(6).***Article 12***1. In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services under this Regulation, the Member States shall take into account all relevant considerations including:

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| (a) | the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties; |

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| (b) | their obligations under sanctions imposed by a common position or a joint action adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations; |

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| (c) | considerations of national foreign and security policy, including those covered by Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment[(5)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:134:FULL&from=EN#ntr5-L_2009134EN.01000101-E0005); |

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| (d) | considerations about intended end use and the risk of diversion. |

2.   In addition to the criteria set in paragraph 1, when assessing an application for a global export authorisation Member States shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.***Article 13***1.   The competent authorities of the Member States, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted. Where they refuse, annul, suspend, substantially limit or revoke an export authorisation or when they have determined that the intended export is not to be authorised, they shall notify the competent authorities of the other Member States and the Commission thereof and share the relevant information with them. In case the competent authorities of a Member State have suspended an export authorisation, the final assessment shall be communicated to the Member States and the Commission at the end of the period of suspension.2.   The competent authorities of Member States shall review denials of authorisations notified under paragraph 1 within three years of their notification and revoke them, amend them or renew them. The competent authorities of the Member States will notify the results of the review to the competent authorities of the other Member States and the Commission as soon as possible. Denials which are not revoked shall remain valid.3.   The competent authorities of the Member States shall notify the Member States and the Commission of their decisions to prohibit a transit of dual-use items listed in Annex I taken under Article 6 without delay. These notifications will contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.4.   Paragraphs 1 and 2 shall also apply to authorisations for brokering services.5.   Before the competent authorities of a Member State, acting under this Regulation, grant an authorisation for export or brokering services or decide on a transit they shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction (meaning an item with essentially identical parameters or technical characteristics to the same end user or consignee). They shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1 and 3. If following such consultation the competent authorities of the Member State decide to grant an authorisation or allow the transit, they shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.6.   All notifications required under this Article will be made via secure electronic means including via a secure system that may be set up in accordance with Article 19(4).7.   All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 19(3), (4) and (6) concerning the confidentiality of such information.***Article 14***1. All individual and global export authorisations and authorisations for brokering services shall be issued in writing or by electronic means on forms containing at least all the elements and in the order set out in the models which appear in Annexes IIIa and IIIb.

2.   At the request of exporters, global export authorisations that contain quantitative limitations shall be split**CHAPTER IV****UPDATING OF LIST OF DUAL-USE ITEMS*****Article 15***1. The list of dual-use items set out in Annex I shall be updated in conformity with the relevant obligations and commitments, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

***(Article 15…)***1. Annex IV, which is a subset of Annex I, shall be updated with regard to Article 30 of the Treaty establishing the European Community, namely the public policy and public security interests of the Member States.

**CHAPTER V****CUSTOMS PROCEDURES*****Article 16***1.   When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.2.   A translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented may be required of the exporter.3.   Without prejudice to any powers conferred on it under, and pursuant to, the Community Customs Code, a Member State may also, for a period not exceeding the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items listed in Annex I which are covered by a valid export authorisation from leaving the Community via its territory, where it has grounds for suspicion that:

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| (a) | relevant information was not taken into account when the authorisation was granted, or |

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| (b) | circumstances have materially changed since the grant of the authorisation. |

4.   In the case referred to in paragraph 3, the competent authorities of the Member State which granted the export authorisation shall be consulted forthwith in order that they may take action pursuant to Article 13(1). If such competent authorities decide to maintain the authorisation, they shall reply within 10 working days, which, at their request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The Member State which granted the authorisation shall inform the other Member States and the Commission.***Article 17***1.   Member States may provide that customs formalities for the export of dual-use items may be completed only at customs offices empowered to that end.2.   Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the C series of the *Official Journal of the European Union*.***Article 18***The provisions of Articles 843 and 912a to 912g of Regulation (EEC) No 2454/93 shall apply to the restrictions relating to the export, re-export and exit from the customs territory of dual-use items for the export of which an authorisation is required under this Regulation.**CHAPTER VI****ADMINISTRATIVE COOPERATION*****Article 25***Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 24. The Commission shall forward the information to the other Member States.Every three years the Commission shall review the implementation of this Regulation and present a report to the European Parliament and the Council on its application, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report***Article 19***1. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk that possible disparities in the application of export controls to dual-use items may lead to a deflection of trade, which could create difficulties for one or more Member States.

2.   Member States shall take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhance the efficiency of the Community export control regime. Such information may include:

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| (a) | details of exporters deprived, by national sanctions, of the right to use the national general export authorisations or Community General Export Authorisations; |
| (b) | data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken. |

3.   Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters[(6)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:134:FULL&from=EN#ntr6-L_2009134EN.01000101-E0006), and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*, without prejudice to Article 23 of this Regulation.4.   A secure and encrypted system for the exchange of information among Member States and whenever appropriate the Commission may be set up by the Commission, in consultation with the Dual-Use Coordination Group set up under Article 23.5.   The provision of guidance to exporters and brokers will be the responsibility of the Member States where they are resident or established. The Commission and the Council may also make available guidance and/or recommendations for best practices for the subjects referred to in this Regulation.6.   The processing of personal data shall be in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the movement of such data[(7)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:134:FULL&from=EN#ntr7-L_2009134EN.01000101-E0007) and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(8)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2009:134:FULL&from=EN#ntr8-L_2009134EN.01000101-E0008).***Article 23***1.   A Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group.It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.2.   The Chair of the Dual-Use Coordination Group or the Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders concerned by this Regulation.***Article 24***Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.**CHAPTER VII****CONTROL MEASURES*****Article 20***1.   Exporters of dual-use items shall keep detailed registers or records of their exports, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:

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| (a) | the description of the dual-use items; |

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| (b) | the quantity of the dual-use items; |

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| (c) | the name and address of the exporter and of the consignee; |

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| (d) | where known, the end-use and end-user of the dual-use items. |

2.   In accordance with national law or practice in force in the respective Member States, brokers shall keep registers or records for brokering services which fall under the scope of Article 5 so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering services, the period during which the items were the subject of such services and their destination, and the countries concerned by those brokering services.3.   The registers or records and the documents referred to in paragraphs 1 and 2 shall be kept for at least three years from the end of the calendar year in which the export took place or the brokering services were provided. They shall be produced, on request, to the competent authorities of the Member State in which the exporter is established or the broker is established or resident.***Article 21***In order to ensure that this Regulation is properly applied, each Member State shall take whatever measures are needed to permit its competent authorities:

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| (a) | to gather information on any order or transaction involving dual-use items; |

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| (b) | to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction or brokers involved in the supply of brokering services under circumstances set out in Article 5. |

***Article 26***This Regulation does not affect:

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| — | the application of Article 296 of the Treaty establishing the European Community, |

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| — | the application of the Treaty establishing the European Atomic Energy Community. |

***Article 27***Regulation (EC) No 1334/2000 is repealed with effect from 27 August 2009.However, for export authorisation applications made before 27 August 2009, the relevant provisions of Regulation (EC) No 1334/2000 shall continue to apply.References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VI.***Article 28***This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Union*.This Regulation shall be binding in its entirety and directly applicable in all Member States.Done at Brussels, 5 May 2009. | ***Article 2***For the purposes of this Regulation:1.‘dual-use items’ means items, including software and technology, which can be used for both civil and military purposes, and shall include […] items which can be used forthe design, development, production or use of nuclear, chemical **or** biological weapons **or** their means of delivery, including all **items** which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices; […]2.‘export’ means:(a) an export procedure within the meaning of Article 269 of the Union Customs Code;(b) a re-export within the meaning of Article **270** of the Union Customs Code; **a re-export also occurs if, during a transit through the customs territory of the Union according to Article 2.10, an exit summary declaration has to be lodged because the final destination of the items has been changed;**(c) **an** outward processing procedure within the meaning of Article 259 of the Union Customs Code; **or**(d) transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the **customs territory of the Union;** it includes making available in an electronic form such software and technology to legal **or** natural persons **or** partnerships outside the **customs territory of the** Union. Export also applies to oral transmission of technology when the technology is described over **a voice transmission medium.**3. ‘exporter’ means:(a) **any natural or legal person or partnership** […] who, at the time when theexport declaration **or the re-export declaration or an exit summary** declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the items out of the customs territory of the Union. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, exporter means the person who has the power for determining the sending of the items out of the customs territory of the Union; **or**(b) **any natural or legal person or partnership** which decides to transmit […] software or technology by electronic media, including by fax, telephone, electronic mail or by any other electronic means to **a destination** […] outside the **customs territory of the** Union **or to make available in an electronic form such software and technology to legal or natural persons or partnerships outside the customs territory of the Union.**Where the benefit of a right to dispose of the dual-use item belongs to a person resident or established outside the **customs territory of the** Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party resident or established in the **customs territory of the** Union.(c) **if (a) or (b) are not applicable,** […] any natural person carrying the **dual use items** to be exported where these **dual use items** are contained in the person's personal baggage within the meaning of Article 1 no. 19(**a**) of Regulation (EU) 2015/2446 of 28 July 2015.(vrt. Ex 7 artikla ja uusi 6 artikla 2c-kohta.)4. ‘export declaration’ means the act whereby a**ny** **natural or legal** person **or partnership** indicates in the prescribed form and manner the wish to place dual-use items specified in point 1 under an export procedure;5. ‘re-export declaration’ means the act within the meaning of Article 5(13) of the Union Customs Code;**5a. ‘exit summary declaration’ means the act within the meaning of Article 5(10) of the Union Customs Code;**6. ‘brokering services’ means:(a) the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or(b) the selling or buying of dual-use items that are located in third countries for their transfer to another third country.For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;7. ‘broker’ means any natural or legal person or partnership […] that carries out brokering services from the **customs territory of the** Union into the territory of a third country;8. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including **by electronic means as well as by telephone or any other** verbal forms of assistance;9. ‘supplier of technical assistance’ means**:**(a) any natural or legal person or partnership […] which supplies technical assistance from the **customs territory of the** Union into the territory of a third country;(b) **any natural or legal person or partnership resident or established in a Member State of the Union […] which supplies technical assistance within the territory of a third country; or****(c) any natural or legal person or partnership resident or established in a Member State of the Union which supplies technical assistance towards a resident of a third country temporarily present in the customs territory of the Union.**10. ‘transit’ means a transport of non-Union dual-use items entering and passing through the customs territory of the Union with a destination outside the **customs territory of the** Union. **These are** items:(a) which are placed under **an** external transit procedure **according to** **Article 226 of the Union Customs Code** and only pass through the customs territory of the Union;(b) which are trans-shipped within, or directly re-exported from, a free zone;(c) which are in temporary storage and are directly re-exported from a temporary storage facility; **or**(d) which were brought into the customs territory of the Union on the same vessel or aircraft that will take them out of that territory without unloading.11. ‘individual export authorisation’ means an authorisation granted to one specific exporter for one end user or consignee in a third country and covering one or more dual-use items;12. ‘global export authorisation’ means an authorisation grantedto one specific exporter in respect of a type or category of dual-use item**s** which may be valid for exports to one or more specified end users and/or in one or more specified third countries;13. 'large project authorisation' means **an individual export authorisation or** a global export authorisation granted to one specific exporter, in respect of a type or category of dual-use item**s** which may be valid for exports to one or more specified end users in one or more specified third countries for the **purpose** […] of a specified **large scale** project […];14. ‘Union general export authorisation’ means an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions and requirements for use as listed in Sections A to **H** of Annex II; ***15. deleted (‘Union general transfer authorisation’)***16. ‘national general export authorisation’ means an export authorisation defined by national legislation in conformity with Article 10(6) and Section C of Annex III;17. ‘customs territory of the Union’ means the territory within the meaning of Article 4 of the Union Customs Code;18. ‘non-Union dual-use items’ means items that have the status of non-Union goods within the meaning of Article 5(24) of the Union Customs Code;19. ‘arms embargo’ means an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; ***20. deleted (‘military end-use’)******21.* ‘cyber-surveillance items’ mean dual-use items specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems;**22. ‘internal compliance programme’ **(ICP)** means **ongoing** effective, appropriate and proportionate […] **policies** and procedures […] **adopted** by exporters to […] **facilitate** compliance with the provisions **and objectives of this Regulation** and with the terms and conditions of the authorisations […] **implemented under** this Regulation**, including, inter alia, […] due diligence measures […] assessing risks related to the export of the items to end users and end uses**.***23. deleted (‘terrorist act’)*****24.‘essentially identical transaction’ means a transaction concerning items with essentially identical parameters or technical characteristics to the same end user or consignee as another transaction;****CHAPTER II****SCOPE*****Article 3***1. An authorisation shall be required for the export of the dual-use items listed in Annex I.2. Pursuant to Article**s** 4**, 4a, […] 8** or **8a**, an authorisation may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I. ***Article 4***1. An authorisation shall be required for the export of dual-use items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part:1. for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;

(b) for a military end-use if the purchasing country or country of destination is subject to an arms embargo. For the purposes of this subparagraph, ‘military end-use’ means**:**(i)incorporation into military items listed in the military list of Member States;(ii) use of production, test or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the abovementioned list; or(iii) use of any unfinished products in a plant for the production of military items listed in the abovementioned list.(c) for use as parts or components of military items listed in the national military list that have been exported from the territory of a Member State without authorisation or in violation of an authorisation prescribed by national legislation of that Member State;(d) […](e) […]1. If an exporter […] is aware that dual-use items which he proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraph 1, he **shall** notify the competent authority, which **shall** decide whether or not […] to make the export concerned subject to authorisation.

3.A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of dual-use items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1. […]4. **[…]** **The** Member State which imposes an authorisation requirement **[…] pursuant to** paragraph**s** 1, 2, **or** 3 **[…]** shall immediately inform **its customs administration and other relevant national authorities […] and […] provide** the other Member States and the Commission […] with **[…]** relevant information **on the authorisation requirement in question**, in particular […] **as regards** the items and end-users concerned**, unless it considers it not appropriate in light of the nature of the transaction or the sensitvity of the information concerned**. **5**. The other Member States shall give all due consideration to this information **received pursuant to paragraph 4** and shall […] inform their customs administrations and other relevant national authorities […].**6**. **In order to allow for an examination of all valid denials by the Member States,** **t**he provisions of Article 15(1), (2) and (5) to (7) shall apply to cases concerning dual-use items not listed in Annex I.**[…]****7.** **All information exchange required pursuant to this Article shall take place in accordance with the legal requirements concerning the protection of personal information, commercial sensitive information or protected defense, foreign policy or national security information. It shall be made via secure electronic means including the system referred to in Article 20(5).****8.** This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479. ***Article 4a*****1. An authorisation shall be required for the export of cyber-surveillance items not listed in Annex I if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for use in connection with internal repression and/or the commission of serious violations of international human rights and international humanitarian law.****2. If an exporter is aware according to its due diligence findings that cyber-surveillance items which it proposes to export, not listed in Annex I, are intended, in their entirety or in part, for any of the uses referred to in paragraph 1, it shall notify the competent authority, which shall decide whether or not to make the export concerned subject to authorisation. The Commission and the Council shall make available guidelines for exporters according to article 24(1).****3. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the export of cyber-surveillance items not listed in Annex I if the exporter has grounds for suspecting that those items are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph 1.****4. The Member State which imposes an authorisation requirement pursuant to paragraphs 1, 2 or 3 shall immediately inform its customs administration and other relevant national authorities and shall provide the other Member States and the Commission with relevant information on the authorisation requirement in question, in particular as regards the items and entities concerned, unless it considers it not appropriate in light of the nature of the transaction or the sensitivity of the information concerned.****5.** **The other Member States shall give due consideration to the information received pursuant to paragraph 4 and shall review it in the light of the criteria set out in paragraph 1 within 30 working days as well as inform their customs administration and other relevant national authorities. In exceptional cases, any Member State may request the extension of the 30 day period. However, the extension may not exceed 30 working days.****6.** **Where all Member States notify the other Member States and the Commission that an authorisation requirement should be imposed for essentially identical transactions, the Commission shall publish in the C series of the Official Journal of the European Union information regarding the cyber-surveillance items and, where appropriate, destinations subject to authorisation requirements […] as notified by the Member States for this purpose.****7.** **The Member States shall review the information published pursuant to paragraph 6 at least annually on the basis of relevant information and analyses provided by the Commission. Where all Member States notify the other Member States and the Commission that the publication of an authorisation requirement should be amended or renewed, the Commission shall promptly amend or renew accordingly the information published pursuant to paragraph 6 in the C series of the Official Journal of the European Union.****8.** **In order to allow for an examination of all valid denials by the Member States, the provisions of Article 15(1), (2) and (5) to (7) shall apply to cases concerning cyber-surveillance items not listed in Annex I.****9.** **All information exchange required pursuant to this Article shall take place in accordance with the legal requirements concerning the protection of personal information, commercial sensitive information or protected defense, foreign policy or national security information. It shall be made via secure electronic means including the system referred to in Article 20(5).** **10.** **Member States shall consider supporting the inclusion of items published pursuant to paragraph 6 in the appropriate international non-proliferation regimes or export control arrangements with a view to extending controls. The Commission shall provide analyses of the relevant data gathered pursuant to Articles 20(2) and 24(2).****11.** **This Regulation is without prejudice to the right of Member States to take national measures under Article 10 of Regulation (EU) 2015/479**. ***Article 5***1. An authorisation shall be required for brokering services of dual-use items listed in Annex I if the broker has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4(1).2. If a broker is aware that the dual-use items listed in Annex I for which he proposes brokering services are intended, in their entirety or in part, for any of the uses referred to in Article 4(1), he **shall** notify the competent authority which **shall** decide whether or not […] to make such brokering services subject to authorisation.**3.** A Member State may extend the application of paragraph 1 to non-listed dual-use items.**4.** A Member State may adopt or maintain national legislation imposing an authorisation requirement on the brokering of dual-use items, if the broker has grounds for suspecting that these items are or may be intended for any of the uses referred to in Article 4(1).**5.** The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 3 and 4 of this Article. ***Article 6***1. The transit of non-Union dual-use items listed in Annex I may be prohibited at any time by the competent authority of the Member State where the items are situated if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1).

2. Before deciding whether or not to prohibit a transit the competent authority may impose in individual cases an authorisation requirement for the specific transit of dual-use items **listed in Annex I** if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1). **In case the transit takes place through the territory of multiple Member States, the competent authority of each affected Member State shall be able to prohibit such transit through its territory.**The competent authority may impose the authorisation requirement on **the natural or legal person or partnership who holds the contract with the consignee in the third country and has the power for determining the sending of the item passing through the customs territory of the Union.****If the natural or legal person or partnership is not resident or established in the customs territory of the Union,** the competent authority may impose the authorisation requirement on:(a) the declarant within the meaning of Article 5(15) of the Union Customs Code;(b) the carrier within the meaning of Article 5(40) of the Union Customs Code; **or**(c) the natural person carrying the […] **dual use items in transit** where these **dual use items** are contained in the personal baggage **of this person** […].(vrt. Uusi 2 artikla 5c- kohta)**3.** A Member State may extend the application of paragraph 1 to non-listed dual-use items.4 The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraph 3 of this Article. ***Article 7***1. An authorisation shall be required for the provision […] of technical assistance related to dual-use items **listed in Annex I** […] if the supplier of technical assistance has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4**(1)**. 2. If a supplier of technical assistance is aware that the dual-use items **listed in Annex I** for which he proposes to supply technical assistance are intended, in their entirety or in part, for any of the uses referred to in Article 4**(1)**, he **shall** notify the competent authority which **shall** decide whether or not […] to make such technical assistance subject to authorisation.**3. Paragraphs 1 and 2 shall not apply if the technical assistance:****(a) is supplied within or into the territory of a country listed in Part 2 of Section A of Annex II, or towards a resident of a country listed in Part 2 of Section A of Annex II;****(b) takes the form of transferring information that is in the public domain or basic scientific research within the meaning of the General Technology Note or of the Nuclear Technology Note of Annex I;****(c) is supplied by authorities or agencies of a Member State in the context of their official tasks;****(d) is supplied for the armed forces of a Member State on the basis of the tasks assigned to them;****(e) is supplied for a purpose which is cited in the exceptions for items of the Missile Technology Control Regime (MTCR technology) in Annex IV; or****(f) is the minimum necessary for the installation, operation, maintenance (checking) or repair of those items for which an export authorisation has been issued.****4. A Member State may extend the application of paragraph 1 to non-listed dual-use items.** **5. A Member State may adopt or maintain national legislation imposing an authorisation requirement on the provision of technical assistance if the supplier of technical assistance has grounds for suspecting that the dual use items for which he proposes to supply technical assistance are or may be intended for any of the uses referred to in Article 4(1).****6. The provisions of Article 8(2), (3) and (4) shall apply to the national measures referred to in paragraphs 4 and 5 of this Article.*****Article 8***1. A Member State may prohibit or impose an authorisation requirement on the export of dual-use items not listed in Annex I for reasons of public security**, including the prevention of acts of terrorism**, or for human rights considerations. 2. Member States shall notify the Commission and the other Member States of any measures adopted pursuant to paragraph 1 without delay after their adoption and indicate the precise reasons for the measures**. If the measure is the establishment of a national control list, Member States shall also inform the Commission and the other Member States of the description of the controlled items.**3. Member States shall also **without delay** notify the Commission and the other Member States of any modifications to measures adopted pursuant to paragraph 1**, including any modifications to the national control lists.** 4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the *Official Journal of the European Union*. **With regard to national control lists, the Commission shall publish separately and without delay in all EU languages a compilation of national control lists in force in the Member States. The Commission shall, upon notification by a Member State of any modifications to its national control list, without delay publish an update to the compilation of national control lists in force in the Member States.** ***Article 8a*****1. An authorisation shall be required for the export of dual use items not listed in Annex I if another Member State requires an authorisation for the export of these items on the basis of a national control list of items adopted by that Member State pursuant to Article 8 and published by the Commission pursuant to article 8(4), and if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for uses of concern with respect to public security, including the prevention of acts of terrorism, or to human rights considerations.****2. A Member State which refuses an authorisation required in accordance with paragraph 1 of this Article, shall also inform the Commission and other Member States of such decision.**1. **A Member State which imposes an authorisation requirement, in application of paragraph 1 on the export of a dual-use item not listed in Annex I, shall without delay inform its customs administration and other relevant national authorities about the authorisation requirement and, where appropriate, provide the other Member States and the Commission with the relevant information, in particular concerning the items and end-users concerned. The other Member States shall give all due consideration to this information and shall inform their customs administrations and other relevant national authorities.**

 **Article 9**1. An authorisation shall be required for intra-Union transfers of dual-use items listed in […] Annex IV. **Dual use items listed in Part 2 of Annex IV shall not be covered by a general authorisation.**2. A Member State may impose an authorisation requirement for the transfer of other dual-use items from its territory to another Member State in cases where at the time of transfer:-the operator or the **competent authority** […] knows that the final destination of the items concerned is outside the **customs territory of the** Union, and-export of those items to that final destination is subject to an authorisation requirement pursuant to Articles 3, 4 or 8 in the Member State from which the items are to be transferred, and such export directly from its territory is not authorised by a general authorisation or a global authorisation, and- no processing or working as defined in Article 60(2) of the Union Customs Code is to be performed on the items in the Member State to which they are to be transferred*.*1. The transfer authorisation shall be applied for in the Member State from which the dual-use items are to be transferred.
2. In cases where the subsequent export of the dual-use items has already been accepted, in the consultation procedures set out in Article 13, by the Member State from which the items are to be transferred, the transfer authorisation shall be issued to the operator immediately, unless the circumstances have substantially changed.
3. A Member State which adopts legislation imposing a requirement **according to paragraph 2** shall inform the Commission and the other Member States of the measures it has taken without delay. The Commission shall publish this information in the C series of the Official Journal of the European Union.
4. The measures pursuant to paragraphs 1 and 2 shall not involve the application of internal frontier controls within the **customs territory of the** Union, but solely controls which are performed as part of the normal control procedures applied in a non-discriminatory fashion throughout the **customs** territory of the Union.

7. Application of the measures pursuant to paragraphs 1 and 2 may in no case result in transfers from one Member State to another being subject to more restrictive conditions than those imposed for exports of the same items to third countries.8. A Member State may, by national legislation, require that, for any intra-Union transfers from that Member State of items listed in Category 5, Part 2 […] of Annex I which are not listed in […] Annex IV, additional information concerning those items shall be provided to the competent authority of that Member State.9. The relevant commercial documents relating to intra-Union transfers of dual-use items listed in Annex I shall indicate clearly that those items are subject to controls if exported from the **customs territory of the** Union. Relevant commercial documents include, in particular, any sales contract, order confirmation, invoice or dispatch note*.***CHAPTER III****EXPORT AUTHORISATION AND AUTHORISATION FOR BROKERING SERVICES AND TECHNICAL ASSISTANCE […]*****Article 10***1. The following **types of** authorisations for export **may be issued or** are established under this Regulation:(a) individual export authorisation;(b) global export authorisation […];(c) national general export authorisation;(d) Union general export authorisations for exports **of certain items to certain destinations under specific conditions and requirements for use** as set out in Sections Ato **H** of Annex II.[…] **T**he authorisations shall be valid throughout the **customs territory of the** Union.**2.** […] **Individual and global export authorisations under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established.****Without prejudice to Article 2.3, where** the exporter is **not** resident or established on the **customs** territory of the Union, **individual export authorisations shall be granted under this Regulation by the competent authority of the Member State where the dual use items are located.** […]All individual and global export authorisations shall be issued, whenever possible, by electronic means on forms containing at least all the elements and in the order set out in the models which appear in Section A of Annex III.**3.** Individual export authorisations and global export authorisations shall be valid for […] **up to two years, unless decided differently by the competent authority.****Large project authorisations** […] shall be validfor a duration to be determined by the competent authority**, but no longer than four years, except in duly justified circumstances based on the duration of the project.**4. Exporters shall supply the competent authority with all relevant information required for their applications for individual and global export authorisation so as to provide complete information in particular on the end user, the country of destination and the end use of the item exported.**Individual export** authorisations **shall be** subject […] to an end-use statement. **The competent authority may exempt certain applications from the obligation of providing an end-use statement. Global export authorisations may be subject to an end-use statement if appropriate.****Exporters using global export authorisations shall […] implement an ICP, unless that is considered unnecessary by the competent authority due to other information it has taken into account when processing the application for a global export authorisation submitted by the exporter.****Reporting and ICP requirements relating to the use of global export authorisations shall bedefined by Member States.** […]At the request of exporters, global export authorisations that contain quantitative limitations shall be split.1. The competent authorities of the Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice. […]

6. National general export authorisations shall:(a) exclude from their scope items listed in Section **I** of Annex II. 1. be defined by national law or practice. They may be used by all exporters, resident or established in the Member State issuing these authorisations, if they meet the requirements set in this Regulation and in the complementary national legislation. They shall be issued in accordance with the indications set out in Section C of Annex III. [… moved below subpara(c)]

(c) not be used if the exporter has been informed by the competent authority that the items in question are or may be intended, in their entirety or in part, for any of the uses referred to in Article 4**(1)**, or if the exporter is aware that the items are intended for the abovementioned uses.**National general export authorisations may also apply to items and destinations listed in Annex II Sections A to H.**[…]Member States shall notify the Commission immediately of any national general export authorisations issued or modified. The Commission shall publish these notifications in the C series of the *Official Journal of the European Union*;7. The competent authorit**y** of the Member State where the exporter is **resident or** established **may** prohibit the exporter from using **Union general export authorisations** if there is reasonable suspicion about his ability to comply with such authorisation or with a provision of the export control legislation.The competent authorities of the Member States shall exchange information on exporters **prohibited from using** **[…]** a Union general export authorisation, unless they determine that the exporter will not attempt to export dual-use items through another Member State. The system referred to in Article 20**[…](5)** shall be used for this purpose. ***Article 11***1. Authorisations for brokering services and technical assistance under this Regulation shall be granted by the competent authority of the Member State where the broker or the supplier of technical assistance is resident or established. Where the broker or the supplier of technical assistance is not resident or established on the **customs** territory of the Union, authorisations for brokering services and technical assistance under this Regulation shall be granted by […] the competent authority of the Member State […] from where the brokering services or technical assistance will be supplied.2. Authorisations for brokering services […] shall be granted for a set quantity of specific items. The location of the items in the originating third country, the end-user and its exact location **shall** be clearly identified.**Authorisations for technical assistance shall clearly identify the end-user and its exact location.**The authorisations shall be valid throughout the **customs territory of the** Union.1. Brokers and suppliers of technical assistance shall supply the competent authority with all relevant information required for their application for authorisation under this Regulation, in particular details of the location of the dual-use items, a clear description of the items and the quantity involved, third parties involved in the transaction, the […] country of destination, the end-user in that country and its exact location.

4. The competent authorities of the Member States shall process requests for authorisations for brokering services and technical assistance within a period of time **to be determined by national law or practice.** […]. All authorisations for brokering services and technical assistance shall be issued, whenever possible, by electronic means on forms containing at least all the elements and in the order set out in the models which appear in Section B of Annex III.*Article 12 –****Deleted***[…]***Article 13***1. If the dual-use items in respect of which an application has been made for an individual export authorisation to a destination not listed in **Part 2 of** Section A of Annex II or to any destination in the case of dual-use items listed in […] Annex IV are or will be located in one or more Member States other than the one where the application has been made, that fact shall be indicated in the application. The competent authority of the Member State to which the application for authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. **This consultation may be carried out using the electronic system mentioned in Article 20[…](5).** The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

If no objections are received within 10 working days, the Member State or States consulted shall be regarded as having no objection.In exceptional cases, any Member State consulted may request the extension of the 10-day period. However, the extension may not exceed 30 working days.2. If an export might prejudice its essential security interests, a Member State may request another Member State not to grant an export authorisation or, if such authorisation has been granted, request its annulment, suspension, modification or revocation. The Member State receiving such a request shall immediately engage in consultations of a non-binding nature with the requesting Member State, to be terminated within 10 working days. In case the requested Member State decides to grant the authorisation, this should be notified to the Commission and other Member States using the electronic system mentioned in Article 20**[…](5).*****Article 14***1. In deciding whether or not to grant an […] authorisation […] or to prohibit a transit **under this Regulation**, […] the Member States shall take into account **all relevant considerations including**:1. Union and Member States’ international obligations and commitments, in particular the obligations and commitments they have each accepted as members of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;

(b) their obligations under sanctions imposed by a decision or a common position adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations; […](c) considerations of national foreign and security policy, including […] those covered by Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment;(d) considerations about intended end use and the risk of diversion. […]**~~2.~~ […] (*moved to article 21.4*)****2.** In addition to the criteria set in paragraph 1, when assessing an application for a global export authorisation Member States shall take into consideration **the implementation by the exporter of an ICP.** ***Article 15***1. The competent authorit**y** […], acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which it has already granted. Where **the competent authority** refuse**s**, annul**s**, suspend**s**, substantially limit**s** or revoke**s** an export authorisation or when **it** ha**s** determined that the intended export is not to be authorised, **it** shall notify the competent authorities of the other Member States and the Commission thereof and share the relevant information with them. In case the competent authority of a Member State has suspended an export authorisation, the final assessment shall be communicated to the competent authorities of the other Member States and the Commission at the end of the period of suspension.2. The competent authorities of the Member States shall review denials of authorisations notified under paragraph 1 within three years of their notification and revoke them, amend them or renew them. The competent authorities of the Member States **shall** notify the results of the review to the competent authorities of the other Member States and the Commission as soon as possible. Denials which are not revoked shall remain valid **and shall continue to be reviewed every three years. At the third review, the Member State concerned shall be required to explain the reasoning for maintaining such denial.**3. The competent authorit**y** […] shall notify the **competent authorities of the other** Member States and the Commission of their decisions to prohibit a transit of dual-use items taken under Article 6 without delay. These notifications **shall** contain all relevant information including the classification of the item, its technical parameters, the country of destination and the end user.4. Paragraphs 1 and 2 shall also apply to authorisations for brokering services and technical assistance **referred to in Article 11**.5. Before the competent authority of a Member State **decides whether or not to grant an authorisation or to prohibit a transit under this Regulation** **[…]**, it shall examine all valid denials or decisions to prohibit a transit of dual-use items listed in Annex I taken under this Regulation to ascertain whether an authorisation or a transit has been denied by the competent authorities of another Member State or States for an essentially identical transaction **[…]**. It shall first consult the competent authorities of the Member State or States which issued such denial(s) or decisions to prohibit the transit as provided for in paragraphs 1, 3 and **4**.**The competent authorities of the Member State or States consulted shall make known within 10 working days whether or not they consider the transaction essentially identical. If no reaction has been received within 10 working days, the Member State or States consulted shall be regarded as not considering the transaction essentially identical.****If more information is required to correctly evaluate the transaction in question, the competent authorities of the Member States concerned shall agree on the extension of the 10-day period. However, the extension may not exceed 30 working days.**If following such consultation the competent authority […] decides to grant an authorisation or allow the transit, it shall notify the competent authorities of the other Member States and the Commission, providing all relevant information to explain the decision.6. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 20**[…](5).**7. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 20**[…](6)** concerning the confidentiality of such information. **CHAPTER IV****AMENDMENT OF LISTS OF DUAL-USE ITEMS AND DESTINATIONS****Article 15a****1**. The Commission **is** empowered to adopt delegated acts in […] **accordance with article 16** **concerning the amendment of** the lists of dual-use items set out in Annex I and […] Annex IV, as follows:(a) The list of dual-use items set out in […] Annex I shall be amendedin conformity with the relevant obligations and commitments, and any modification thereof, that Member States and the Union have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties. Where the amendment of […] Annex I concerns dual-use items which are also listed in Annexes II **or** IV, […] those Annexes shall be amended accordingly. […]**(b) […] deleted****(c) […] deleted**2. The Commission **is** empowered to adopt delegated acts **in accordance with Article 16** to amend Annex II by […] removing items […] **and** **by adding or removing** destinations from the scope of Union general export authorisations […] **in consultation with the Dual-Use Coordination Group set up pursuant to Article 21 and taking into consideration obligations and commitments under the relevant non-proliferation regimes and export control arrangements, such as amendments to control lists, as well as relevant geopolitical developments**. Where imperative grounds of urgency require a removal of particular destinations from the scope of a Union general export authorisation, the procedure provided for in Article 17 shall apply to delegated acts adopted pursuant to this paragraph.***Article 16***1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~2.~~ [**Moved to article 15a**]~~(a)~~ **[Moved to article 15a]**~~(b)~~ **[…] deleted**~~(c)~~ **[…] deleted**~~3~~. **[Moved to article 15a]**2. The power to adopt delegated acts referred to in […] Article **15a** shall be conferred on the Commission for a period of five years from … [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.3. The delegation of power referred to in […] Article **15a** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~4~~**.** Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-Institutional Agreement of 13 April 2016on Better Law-Making.5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.6. A delegated act adopted pursuant to […] Article **15a** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. ***Article 17***1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in […] Article 16(**6**). In such a case, the Commission shall repeal the act […] **immediately** following the notification of the decision to object by the European Parliament or by the Council. ***Article 17a*****The list of dual-use items set out in** Annex IV, which is a subset of Annex I, shall be updated with regard to Article 36 of the Treaty **on the Functioning of the European Union,** namely the public policy and public security interests of the Member States.**CHAPTER V****CUSTOMS PROCEDURES** ***Article 18***1. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorisation has been obtained.2. A translation of any documents furnished as proof into an official language of the Member State where the export declaration is presented may be required of the exporter.3. Without prejudice to any powers conferred on it under, and pursuant to, the Union Customs Code, a Member State may also, for a period not exceeding the periods referred to in paragraph 4, suspend the process of export from its territory, or, if necessary, otherwise prevent the dual-use items […] which are **or are not** covered by a valid export authorisation from leaving the Union via its territory, where it:(a) has grounds for suspicion that (i) relevant information was not taken into account when the authorisation was granted, or(ii) circumstances have materially changed since the grant of the authorisation, **or**(b) **has relevant information regarding the potential application of measures under Article 4(1).**4. In the case**s** referred to in paragraph 3, the competent authority of the Member State which granted the export authorisation **or which may take action pursuant to Article 4(1)** shall be consulted forthwith in order that they may take action pursuant to Article 15(1) **or Article 4(1)**. If such competent authority decides to maintain the authorisation **or not to take action pursuant to Article 4(1)** it shall reply within 10 working days, which, at its request, may be extended to 30 working days in exceptional circumstances. In such case, or if no reply is received within 10 or 30 days, as the case may be, the dual-use items shall be released immediately. The competent authority of the Member State which granted the authorisation shall inform the competent authorities of the other Member States and the Commission.5. The Commission, in cooperation with the Member States, **may** develop guidance to support interagency cooperation between licensing and customs authorities.***Article 19*** 1. Member States may provide that customs formalities for the export of dual-use items may be completed only at customs offices empowered to that end.2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices. The Commission shall publish the information in the C series of the *Official Journal of the European Union*.**CHAPTER VI****ADMINISTRATIVE COOPERATION, IMPLEMENTATION AND ENFORCEMENT*****Article 19a –*** *Deleted*[…] ***Article 20***1. Member States shall inform the Commission without delay of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including:(a) a list of the **competent** authorities **of the Member States** empowered to:- grant export authorisations for dual-use items;- grant authorisations under this Regulation for the provision of brokering services and technical assistance;- decide to prohibit the transit of non-Union dual-use items under this Regulation;(b) the measures referred to in Article 22**(1).**The Commission shall forward the information to the other Member States and shall publish the information in the C series of the *Official Journal of the European Union*.1. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between the competent authorities with a view to enhance the efficiency of the Union export control regime and to ensure the consistent and effective implementation and enforcement of control throughout t**he customs territory of the Union.**

**The** information **exchange** **may** include: **(a) […] relevant […] licensing data, […] provided for each authorisation issued (e.g. […] value and types of licence and related destinations, number of users of general authorisations);****(b) […] additional […] information regarding the application of controls, including information on the application of criteria set out in Art. 14.1, number […] of operators with ICPs […] and, where available, data on exports of dual-use items carried out in other Member States;** **(b1) information regarding the analysis underlying additions or planned additions to national control list pursuant to Article 8;****(c)** information regarding the enforcement of controls, including **risk-based audits,** details of exporters deprived of the right to use the national or Union general export authorisations**, and, where available, number of** violations, seizures and application of other penalties**;** **(d)** data on sensitive end users, actors involved in suspicious procurement activities, and, where available, routes taken.**3. The exchange of licensing data shall take place at least annually in accordance with guidelines to be drawn up by the Dual Use Coordination Group established under Article 21 and with due consideration to legal requirements concerning the protection of personal information, commercially sensitive information or protected defense, foreign policy or national security information.****3a. Member States and the Commission shall regularly examine the implementation of Article 14 based on information submitted pursuant to this Regulation and analyses of such data. All participants of these exchanges shall respect the confidentiality of the discussions.****4. Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters[[1]](#footnote-1), and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.**1. A secure and encrypted system shall be developed by the Commission, in consultation with the Dual-Use Coordination Group set up pursuant to Article 21, to support direct cooperation and exchange of information between the competent authorities of the Member States and, **where appropriate**, the Commission. The system **[…] shall, where feasible,** be connected **by the Commission** to the electronic licensing systems of the competent authorities of the Member States **to the extent necessary for the purpose of facilitating this direct cooperation and exchange of information**. The European Parliament shall be informed about the system’s budget, development and functioning.

**6**. The processing of personal data shall be in accordance with the rules laid down in […] **Regulation 2016/679** of the European Parliament and of the Council of **27 April 2016** on the protection of […] **natural persons** with regard to the processing of personal data and on the free movement of such data, and **repealing** Directive 95/46/EC **(General Data Protection Regulation)**, **as well as Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.** […] ***Article 21***1. A Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group. It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.

2. The […] Dual-Use Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers, **suppliers of technical assistance** and other relevant stakeholders concerned by this Regulation. 3. The Dual-Use Coordination Group shall, where appropriate, set up technical expert groups composed of experts from Member States to examine specific issues relating to the implementation of controls, **including issues relating to the updating of the Union control lists in Annex I**. […] Technical expert groups shall, where appropriate, consult exporters, brokers, **suppliers of technical assistance** and other relevant stakeholders concerned by this Regulation.4. […] **The Commission shall support an EU licensing and enforcement capacity-building programme, including by developing, in consultation with the Dual-Use Coordination Group, common training programmes for officials of the Member States.*****Article 22***1. Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties **shall** be effective, proportionate and dissuasive.2. The Dual-Use Coordination Group shall set up an Enforcement Coordination Mechanism […] **to support exchange of information and direct cooperation** between competent authorities and enforcement agencies of **the Member States. […] Under the Enforcement Coordination Mechanism, the Member States and the Commission shall exchange relevant information, where available, including on the application, nature and effect of the measures, taken under paragraph 1, on enforcement of best practices and unauthorised exports of dual use items and/or infringements to this regulation and/or relevant national legislation.****Under the Enforcement Coordination Mechanism, the Member States and the Commission shall also exchange information on […] best practices of national enforcement authorities regarding risk-based audits, the detection and prosecution of unauthorised exports of dual use items and/or possible other infringements of this regulation and/or relevant national legislation.** **Exchange of information under the Enforcement Coordination Mechanism shall be confidential.***Article 23 –****deleted***[…]**CHAPTER VII****TRANSPARENCY,OUTREACH, MONITORING, EVALUATION*****Article 24***1. […]The Commission and the Council shall, where appropriate, **[…]**make available **guidelines** […] and/or recommendations for best practices for the subjects referred to in this Regulation to ensure the efficiency of the Union export control regime and the consistency of its implementation. […] **The provision of guidelines and/or recommendations for best practices […] to exporters, brokers and suppliers of technical assistance shall be the responsibility of the Member States where they are resident or established. […] In these guidelines and/or recommendations for best practices […] the information needs of small and medium-sized companies shall be especially taken into account […].**2. The Commission shall, […] **in consultation with the Dual-Use Coordination Group,** submit an annual report to the European Parliament and the Council on the implementation **[…] of this Regulation**, and on the activities, examinations and consultations of the Dual-Use Coordination Group. **This** annual report shall be public**. […]** **The annual report shall include information on authorisations (in particular number and value by types of items and by destinations at EU and Member State levels), denials and prohibitions under this Regulation, as well as on the administration (in particular staffing, compliance and outreach activities, dedicated licensing or classification tools), and on the enforcement of controls (in particular number of infringements and penalties).****With regard to cyber-surveillance items the annual report shall include dedicated information on authorisations, in particular on the number of applications received by items, the issuing Member State and the destinations concerned by these applications, and on the decisions taken on these applications.** **The information contained in the annual report shall be presented in accordance with the principles set out in paragraph 3.** **The Commission and the Council shall make available guidelines on the methodology for data gathering and processing for the preparation of the annual report, including the determination of the types of items and the availability of enforcement data.**3. **[…] Member States shall provide to the Commission all appropriate information for the preparation of the report with due consideration given to legal requirements concerning the protection of personal information, commercial sensitive information or protected defense, foreign policy or national security information. Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics applies to information exchanged or published under this article.** **4. Between five and seven years after the date of application of this Regulation, the Commission shall carry out an evaluation of this Regulation and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. After three years after the date of application of this Regulation, the Commission shall carry out an evaluation of Art. 4a and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.** **CHAPTER VIII****CONTROL MEASURES*****Article 25***1. Exporters of dual-use items shall keep detailed registers or records of their exports, in accordance with the national law or practice in force in the respective Member States. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:(a) the description of the dual-use items;(b) the quantity of the dual-use items;(c) the name and address of the exporter and of the consignee;(d) where known, the end-use and end-user of the dual-use items.2. In accordance with national law or practice in force in the respective Member States, brokersand suppliers of technical assistance shall keep registers or records for brokering **services** or technical assistance so as to be able to prove, on request, the description of the dual-use items that were the subject of brokering **services** or technical assistance, the period during which the items were the subject of such services and their destination, and the countries concerned by those services.3. The registers or records and the documents referred to in paragraphs 1 and 2 shall be kept for at least **five** years from the end of the calendar year in which the export took place or the brokering **services** or technical assistance were provided. They shall be produced, on request, to the competent authority.4. Documents and records of intra-Union transfers of dual-use items listed in Annex I shall be kept for at least three years from the end of the calendar year in which a transfer took place and shall be produced**,** **on request,** to the competent authority of the Member State from which these items were transferred.***Article 26*** In order to ensure that this Regulation is properly applied, each Member State shall take **all necessary** **measures** […] to permit its competent authorities:(a) to gather information on any order or transaction involving dual-use items;(b) to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction or brokers involved in the supply of brokering services under circumstances set out in Article 5, or suppliers of technical assistance under the circumstances set out in Article 7.**CHAPTER IX****COOPERATION WITH THIRD COUNTRIES*****Article 27***1. The Commission and […] **the** Member States shall, where appropriate, maintain **[…] dialogues with third countries, with a view to promoting the […] global convergence of controls. […]** **The dialogues may support […] regular and reciprocal cooperation with third countries, including exchange of information and best practices, as well as capacity-building and outreach to third countries. The dialogues may also encourage the adherence of third countries to robust export controls developped by multilateral export control regimes as a model for international best practice.**2. Without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, the Council may authorise the Commission to negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation. […]These negotiations shall be conducted in accordance with the procedures established in Article 207(3) of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, as appropriate.**CHAPTER X****FINAL PROVISIONS*****Article 28***This Regulation **applies** without prejudice to the Commission Delegated Decision of 15 September 2015 supplementing Decision No 1104/2011/EU of the European Parliament and of the Council.***Article 29***Regulation (EC) No 428/2009is repealed with effect from […].However, for export authorisation applications made before […], the relevant provisions of Regulation (EC) No 428/2009 shall continue to apply.References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VI.***Article 30***This Regulation shall enter into force on the ninetieth day following that of its publication in the *Official Journal of the European Union*.This Regulation shall be binding in its entirety and directly applicable in all Member States. |

1. [↑](#footnote-ref-1)