

Feedback on the White Paper on options for enhancing support for research and development involving technologies with dual-use potential

Introduction

On the 24th of January 2024, the European Commission presented the White Paper on options for dual use research in the new multiannual framework programme, as part of the Economic Security Package. The White Paper states that the current funding instruments (Horizon Europe and the European Defence Fund, but also the European Investment Bank instruments) do not provide sufficient opportunities for synergies and cross-fertilization between civil and defence technologies in the European industry.

EECARO welcomes the opportunity to comment on the White Paper, as it touches upon an important element of the European Union's economic security and strategic autonomy interests, with particular relevance for research organisations. As EECARO is working on export control compliance in research organisations, the focus of our contribution will be on the intersection between R&D support and export controls. Due to the many unknowns about the content and the impact of the options, EECARO has no explicit preference for either of the options presented in the White Paper, but considering the importance of emerging technologies in research with dual-use potential, we strongly urge the Commission to have more attention for export control scrutiny in whatever option is selected.

Definition of technologies with dual-use potential

The White Paper invites respondents to share their view on what elements can constitute the building blocks of a definition of technologies with dual-use potential, referring to the definition included in the EU Dual-Use Regulation 821/2021. The definition of "dual use" as "software and technology that has the potential to be used for both civil and military purposes" and the term "dual-use potential" used throughout the document, do not directly make a link to the EU Dual-Use Regulation. Under this Regulation, the technical specifications from Annex I constitute the criteria for when a technology is 'dual use'. Annex I items have a national security link, while the concept of dual-use potential is much broader. However, the common part of the "dual-use items" definition for export control purposes and the "R&D with dual-use potential" definition is that they are interesting for civil and military use cases. In our view, there is no need to come to a common definition. It would even be better to use the term "R&D with civil/military synergy potential" rather than "dual-use potential", in order to avoid confusion.

Current funding challenges for export control compliance in research

Regardless of the definition that is used for dual-use in any funding instruments, any increase in research on technologies with civil/military synergy potential will also entail an increase in research projects that will be subject to export control scrutiny. This will require increasing attention to the challenges that the research community is already facing in the current Horizon Europe and EDF funding frameworks. These challenges include, among others, technology classification, regulatory unclarity and follow-up, and the lack of skilled in-house organizational resources with expertise in export control regulations.

- **Technology Classification:** determining whether a technology falls under (EU) export control regulations involves a complex classification process based on the specifications in Annex I of the EU Dual-Use Regulation, regardless of the stated, suspected or potential military use. Factors such as the intended use, technical specifications, TRL levels, and potential dual-use capabilities must be carefully considered when applying for a licence. This complexity can lead to uncertainty and delays in decision-making for research organisations, especially due to the intangible nature of many of the technologies these institutes are working on/with.
- **Regulatory unclarity and follow-up:** consortium partners in research projects with civil/military synergy potential may need an export license. Applicable national and international export control regulations are extensive and intricate, encompassing a wide range of new and emerging technologies. Understanding the nuances of these regulations, for instance relating to technical assistance, requires substantial expertise and resources, posing challenges for research organisations, particularly smaller research organisations with limited administrative capacity, but also to SMEs. In many funded projects, the consortium will include players who have not yet come into close contact with export regulations due to the research they do, services they offer, their targeted (local) markets or their novelty (e.g. start-ups), and which therefore have little knowledge of or regulatory (process) expertise in export control compliance. The establishment of consortia and projects that are active in the dual-use sector therefore requires the support of legal experts and skilled in-house expertise, and funding for such support should be an eligible cost under the funding framework. In addition, the European Commission and the funding agencies should provide a central point of contact for such issues.
- **Skilled in-house organizational resources with expertise in export control regulations:** the challenges in technology classification and the regulatory uncertainty mentioned above add to the already complex and dynamic nature of export controls. This requires skilled people inside the research organisation to perform and maintain internal compliance measures, even more so when there will be more focus on funded projects with civil/military synergy potential.
- **Currently, the only reference to export control in the process of a funded project under Horizon Europe, is made in the requirement for beneficiaries to ‘tick the box’ that they will comply with the EU Dual-Use Regulation.** There is no (monitoring) process in place to screen whether the project activities are subject to export control, neither in the proposal phase nor during the course of the project, while almost all of the peer-reviewed research and underlying data sets, funded in whole or in part by Horizon Europe projects have to be made freely available with no restrictions on use. Even if the box is ticked, there is no follow up or

support to determine what the project beneficiaries need to do. Installing a better follow-up mechanism for this would not only facilitate the beneficiaries' compliance with export control regulations (including beneficiaries from third countries associated to Horizon Europe), but would also provide indications on where potential synergies lie between civil research and the defence sector.

- In addition, discussions with the various national authorities have shown that they have a great deal of knowledge regarding the export of goods, but not always when it concerns technologies in a research context. Therefore, in order to avoid delays in the implementation of projects (waiting for licenses, discussion with the authorities), a uniform approach is necessary for all national authorities who process licenses in the context of EU funded projects. Currently, the type of licenses foreseen by the EU Dual-Use Regulation do not match with the requirements of EU funded projects. For example, the collection of multiple end-use certificates by the Consortium members, or the required details in the license applications (value and origin of the technology, country of destination and end use) clearly do not fit with the needs of the big consortia participating in such funded projects. Finally, certain clauses which can typically be added to sales contracts for the purpose of end-use(r) screening (e.g.; No-Russia clause or the catch-all provisions for non-listed items in the EU Dual-Use Regulation), are difficult to implement in heavily standardised Consortium Agreements. For any synergies between the civil and defence industry to be successful, this needs to be more harmonised and more efficient.

Conclusions

EECARO fully supports the European Commission's plans to increase the synergies between civil and military technologies in the European industry. We strongly suggest that, in any option that is selected by the Commission, export control scrutiny is given full attention throughout the research project lifecycle, from preparation of the calls, over the granting of the projects up to the final uptake in the defence industry. The Commission should provide guidance to the parties, particularly in calls focused on research with civil/military synergy potential and provide guidance to the parties answering those calls. Specific measures could include:

- Ensure eligibility of the costs for engaging third parties (legal advisors), specialized in export control regulations, to help the beneficiaries to fulfil the legal obligations relating to export control.
- Create a dual use-flagging mechanism for research involving dual use items and research with civil/military synergy potential. This mechanism should allow for better support and a more efficient follow up of such projects, and should make sure that the EU and/or national authorities are available to provide guidance to the project beneficiaries where necessary.
- Create an EU general export license specific for such funded projects that would be granted together with the project.

Most importantly, whatever option is chosen, it is vital that the European Commission and the funding agencies keep the synergies between civil and military research in focus throughout their funding cycles. Flagging these synergies and following up on them is the only way to make sure that the defence industry can take up any research with civil/military synergy potential.

About EECARO

The European Export Control Association for Research Organisations (EECARO) is a network that unites European research institutes, universities, and their export control compliance officers with a view to addressing the specific character of export controls in a research context. This includes the intersection of export controls and other relevant areas such as knowledge/research security and R&D funding for technologies with civil/military synergy potential. For more information, please visit: <http://www.eecaro.eu> | Contact: info@eecaro.eu