

Feedback on the White Paper on Export Controls

Introduction

The White Paper on Export Controls, published on 24 January 2024 by the European Commission, outlines several response proposals to foster uniform and effective controls across the European Union (EU) and to open a discussion with EU Member States and stakeholders, including the research community, on the evaluation of the functioning of the Dual-Use Regulation and the ability of the current framework to effectively meet the EU's present and future security needs. EECARO supports the Commission's efforts to seek ways forward to promote a level-playing field within the EU and beyond when dealing with sensitive and emerging technologies.

Export controls, by nature, are a protective regulatory instrument focused on national security and human rights related considerations. By linking the White Paper on Export Controls to the EU Economic Security Strategy, the nexus between export controls and economic security is emphasized. As mentioned in an earlier EECARO position paper¹, EECARO sees added value in bringing some aspects of economic security, namely the risk of technological leakage, under the notion of research security. Export controls, with their systematic transaction-based approach for listed technologies and complemented with a case-specific approach for end-uses or end-users of concern, have a solid track-record in managing certain security risks related to critical technologies. However, EECARO also cautions to re-assess the means and ends of export controls ultimately in light of economic security benefits and costs.

Several members of EECARO are also part of other Associations, such as the League of European Research Universities (LERU), the European Association of Research and Technology Organisations (EARTO) and the Conference of European Schools for Advanced Engineering Education and Research (CESAER). These associations also provide relevant feedback to the White Paper on Export Controls that can complement the following reflections from EECARO.

Implementation challenges of the current EU Dual-Use Regulation and bringing forward the next evaluation

EECARO appreciates the Commission's initiative in soliciting research and industry perspectives on the future of export controls in Europe. The key for operational success in implementing export control laws in a research context is clear guidelines in addition to clear regulatory requirements. The mutual work of the Commission and the EU Members States in developing guidelines on

¹ EECARO's Feedback on the 'Enhancing Research Security in Europe': <https://eecaro.eu/eecaro-publications/eecaros-feedback-on-the-enhancing-research-security-in-europe-call-for-evidence/>

internal compliance programs and research compliance was an essential milestone² to help the research community be compliant with the export control laws and regulations. One of the most challenging export compliance issues for the research sector is dealing with Intangible Technology Transfers (ITT), since science and technology mutually drive each other's progress.

The 2021 revised EU Dual-Use Regulation was the result of time-consuming and difficult negotiations between the European Commission, the European Parliament and the EU Member States. The aftermath of the COVID-19 pandemic and the war in Ukraine pose until today significant challenges for the competent authorities to implement the changes, including a timely schedule of technical implementation meetings under the Dual-Use Coordination Group. Therefore, executing a new evaluation seems not evident.

From a research sector perspective, the 2016-2021 momentum for an optimised EU export control system was not materialised. EECARO understands that the proposal to bring forward the next evaluation is not intended to annul the focus on the ongoing implementation actions by EU Member States, neither does it aim to initiate a full-scale review of the 2021 export control compromise. However, EECARO wants to stress that bringing forward such partial evaluation should not mean that the outstanding challenges³, and the follow-up questions emerging from the guidance on research involving dual-use items⁴, are postponed even further in time. Some key export control challenges in research context include:

- Identifying the exporter in specific research relevant scenarios.
- Evaluating which research activities and outputs fall under the scope of listed dual-use items, especially for emerging and intangible technologies.
- Balancing the need to comply with export control regulations and the commitment to academic freedom, openness and collaboration in research.
- Obtaining timely and accurate information and guidance from national authorities on the interpretation and application of export control rules, as well as the required licenses and procedures.
- Procedural problems in licencing application for specific research activities, such as publications, Open Access or Open Data output, or the Open-Source development of controlled technology .
- Supporting export control scrutiny and follow-up for research activities funded by national or EU-level agencies, in particular concerning funding of R&D with dual-use potential.⁵

² Recommendation (EU) 2021/1700 of 15 September 2021 on internal compliance programmes for controls of research involving dual-use items under Regulation (EU) 2021/821.

³ See EECARO's comments to EU-US Trade and Technology Council Export Controls Working Group 7: <https://eecaro.eu/eecaro-publications/eecaro-comments-to-eu-us-trade-and-technology-council-export-controls-working-group-7-ecwg/>

⁴ Recommendation (EU) 2021/1700 of 15 September 2021 on internal compliance programmes for controls of research involving dual-use items under Regulation (EU) 2021/821

⁵ See also EECARO's feedback on the White Paper White Paper on options for enhancing support for research and development involving technologies with dual-use potential.

In this context, EECARO welcomes the possibility to bring forward proposals to consider for discussions between the European Commission, the European Parliament and the EU Member States to include in the 2024 assessment and 2025 evaluation. EECARO sees added value, on the one hand, to focus on amending the regulation, where appropriate, and on the other hand in adding additional guidance. While guidance is important, it can only be used to clarify aspects within the regulatory framework, not substitute for it. The White Paper indicates that the Commission and EU Members continue working on the more effective implementation of ITT controls. EECARO particularly values the forthcoming guidance as indicated in the ‘Operational conclusions of the Working Party on Dual Use Goods on the Intangible Transfer of Technology’ from 19 December 2023⁶. The topics selected for such additional guidance include cloud computing controls and public domain/basic scientific research exemptions. EECARO would like to see publications added to this list, so that better guidance on this topic can alleviate concerns from research organizations, awaiting further clarification in the Dual-Use Regulation itself. EECARO encourages the Commission to engage with the Member States but also with the academic institutions to identify the problems and search for targeted and effective solutions.

Suboptimal effect of national export controls, in particular on critical or emerging technologies, with extra burden on the research sector

The Commission proposal identifies the lack of a common EU voice in world-wide discussions as an important shortcoming, partly due to the autonomy of EU Member States in international fora such as the informal multilateral export control regimes, and partly due to the lack of coordination among EU Member States and with the Commission in preparation of technical proposal decisions in these regimes. The Commission links this shortcoming to the need for better political coordination of export controls, including on critical or emerging technologies and how to act as a geopolitical actor.

EECARO sees merit in the evaluation of the existing export control exchange fora within the EU, the Working Party on Dual-Use Goods and the Dual-Use Coordination Group, even though industry and academia stakeholders do not participate in these fora. Such evaluation, taking into account the varying technical, economic and political interests of the EU Member States, could contribute to a more targeted engagement between regulators and stakeholders at technical, intra-EU political and outward-looking political levels for the relevant export control topics. EECARO highly values a level-playing field for research organizations across export control jurisdictions.

EECARO supports the initiative from the European Commission to improve the coordination of new export controls by different EU Member States. Existing national controls recently introduced by Spain, Netherlands and France illustrate that such controls are not identical, even for arguably the same item scope. As some of these national controls directly target new and emerging technology areas, such as quantum computing technologies, R&D organizations are in direct scope of these controls, predominantly from a technology control perspective. As R&D

⁶ Operational conclusions of the Working Party on Dual Use Goods on the Intangible Transfer of Technology’ from 19 December 2023: <https://data.consilium.europa.eu/doc/document/ST-16690-2023-REV-1/en/pdf>

organizations have numerous intra-EU and international collaborations, a level-playing field across the EU is the absolute minimum to share the burden of such controls.

Given the ongoing war in Ukraine, it is expected that in the (near) future, more quasi-agreed emerging technologies proposals, predominantly from the Wassenaar Arrangement, will surface and will be ready to be adopted under national or EU-level control measures. It is therefore important that both in the technical discussions at multilateral export control regimes, as well as when establishing these controls in the EU, the implementation impact of such controls in a research context is carefully assessed. EECARO advocates to not only improve the coordination of significant new controls in the area of critical or emerging technologies, but also to coordinate an EU impact assessment of such new controls. EECARO offers its support to regulators for such impact assessment and to complement the traditional focus on industry. EECARO prefers a careful implementation assessment over a fast-acting EU mechanism to overcome the standstill introducing new or amended controls.

Conclusions

EECARO is convinced that the research sector can contribute to the proposed actions in the White Paper on Export Controls by providing valuable insights and expertise on emerging technologies and their potential dual-use applications. This contribution can help inform the development of new controls and ensure that they are effective in addressing security risks. Additionally, the research sector can collaborate with policymakers to identify problems and develop best practices for compliance and due diligence in the export of dual-use items.

The current Dual-Use Regulation presents both challenges and opportunities for the research sector to contribute to the development of effective and uniform export controls in the EU. By working together, it can be ensured that the EU's export control framework is implementable and enforceable to meet the present and future security needs of the EU and its exporters.

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 control compliance 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: <https://eecaro.eu/> | Contact: info@eecaro.eu