



INTERNAL COMPLIANCE AND EXPORT CONTROL GUIDANCE DOCUMENTS FOR ACTORS FROM ACADEMIA AND RESEARCH

SIBYLLE BAUER, KOLJA BROCKMANN, MARK BROMLEY AND GIOVANNA MALETTA

INTRODUCTION

This SIPRI Good Practice Guide outlines the actor-specific, compliance-related guidance material that is available to researchers and other actors in universities and research institutes who might be affected by the European Union's arms and dual-use export controls.¹ It covers guidance material produced by national governments, the EU and other bodies, as well as publicly available Internal Compliance Programmes (ICPs) produced by universities and research institutes.

Developments in science and technology mean that academic and research institutions sometimes 'export' items that are subject to dual-use controls. For example, there have been a number of cases in which scientists have published research on the Internet that details the processes by which items subject to dual-use export controls can be produced. This activity can be seen as constituting an export of *intangible goods* and is therefore subject to export controls. Moreover, academic and research work in the biological, chemical and nuclear fields may involve the transfer of *physical items* that are subject to export controls and, thus, create avenues for the proliferation of weapons of mass destruction-related materials. Nonetheless, very few scientists are sufficiently aware of or trained in export control- and compliance-related matters. There is therefore significant potential for export control rules to be unwittingly violated. Finally, the fact that the concept of academic freedom is enshrined as a core value in article 13 of the EU's Charter of Fundamental Rights makes export controls in the context of academic and scientific research particularly challenging in the EU. This provision can possibly be in conflict with states' responsibilities in relation to export controls.

Given the complexity of the issues involved and the challenges facing universities and research institutes, there is a clear need to make scientists and researchers aware of the compliance-related guidance material that is already available and to fill any remaining gaps.

¹ For further information, see SIPRI, 'Challenges and good practices in the implementation of the EU's arms and dual-use export controls: A cross-sector analysis' (forthcoming).

SERIES SUMMARY

● The scope of European Union (EU) dual-use and arms export controls has expanded in recent years to cover a wider range of goods, technologies and activities. This means that a broader range of sectors and actors are now affected by controls. This expansion has been accompanied by efforts by governments and the EU to incentivize the adoption of internal compliance programmes (ICPs) by companies and other affected entities. An ICP is an arrangement that a company or other entity puts in place to ensure that it is complying with dual-use and arms export controls. However, while the requirement to have an ICP is becoming more mainstream, the guidance available on how one should be established and maintained is often generic and fails to take into account the specific needs of different affected sectors and actors. This SIPRI Good Practice Guide is one of a short series that helps fill this gap by collecting available sector or actor-specific compliance-related guidance material. This Guide presents guidance material that is available to research and academia. It covers guidance material produced by national governments, the EU and other bodies, as well as publicly available ICPs produced by universities and research institutes.



GOVERNMENT- AND EU-ISSUED GUIDANCE MATERIAL

German Federal Office for Economic Affairs and Export Control (BAFA), ‘Information leaflet on responsibilities and risks in case of know-how transfer: control of technical cooperation with individuals, universities and research institutions’ (Aug. 2005), <http://www.bafa.de/SharedDocs/Downloads/EN/Foreign_Trade/afk_information_leaflet_know-how_transfer.pdf?__blob=publicationFile&v=2>.

This leaflet explains the objectives and scope of export controls, especially for universities and researchers. It introduces the specific risks associated with tangible and intangible technology transfers, and with technical assistance. It also identifies what falls within the category of technical assistance and warns about the fines and penalties that could apply. In addition, the document provides examples of critical technical assistance (Annex 1) and a warning notice about illicit procurement attempts (Annex 2).

United Kingdom Department for Business Innovation and Skills, Export Control Organisation, ‘Guidance on export control legislation for academics and researchers in the UK’, (Mar. 2010), <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68680/Guidance_on_Export_Control_Legislation_for_academics_and_researchers_in_the_UK.pdf>.

This document summarizes the UK’s export control system and explains the general exemptions for basic scientific research and information ‘in the public domain’. It provides information on catch-all controls, particularly the requirement to have been ‘informed’ or be ‘aware’ of potential WMD or military end-use in an embargoed destination, in order for controls to apply. The document gives more specific information on cases of ‘public domain’ and ‘nationality’, and there is a set of questions to determine whether transfers are licensable. In addition, the document provides three case studies (Annex A) and a summary of the legislative background (Annex B).

US Department of State, Bureau of International Security and Nonproliferation, Export Control and Related Border Security (EXBS), ‘Guidance for academic and research organizations’, <<http://icp.rit.albany.edu/index.php/industry-sector-specific-tools/guidance-for-academia-and-research-organizations>>.

The EXBS programme of the US Department of State provides guidance for academic and research organizations on its ‘Internal Compliance Program Guide’ website. The guidance document discusses relevant terminology and the academic fields that could potentially be affected by strategic trade controls, as well as the specific goods, technologies and activities that would typically be affected. Among the documents available are some consolidated best practice guidelines, a basic approach to determining licence requirements for research, various templates and a list of reference materials.



Australian Government, Department of Defence, 'Defence trade controls act: Scenarios', <<http://www.defence.gov.au/ExportControls/Scenarios.asp>>.

The website of the Australian Department of Defence provides a list of scenarios in which export controls may apply. These include a number of scenarios that commonly apply to academics and researchers. Some of the relevant scenarios involve academic publications; conferences; educational instruction management; research, correspondence and informal scientific exchanges; editing and peer review; and travelling and working overseas.

OTHER GUIDANCE MATERIAL

European Commission, 'Explanatory note on potential misuse of research', <http://ec.europa.eu/research/participants/portal/doc/call/h2020/drs-01-2015/1645162-explanatory_note_on_potential_misuse_of_research_en.pdf>.

This document provides an explanation of the provision on 'misuse of research' in the application for research grants under the Horizon 2020 programme. The note provides only limited information on the EU's arms and dual-use export controls. However, it does outline the importance of ethics review and explain the potential security issues and the additional security measures that may need to be implemented in a research project.

The Association of University Legal Practitioners; Project Alpha, King's College London, the UK Export Control Organisation and the British Foreign and Commonwealth Office, 'Higher education guide and toolkit on export controls and the ATAS student vetting scheme' (Apr. 2015), <http://kcl-digi-prod-wa-wordp-ne-04.azurewebsites.net/alpha/wp-content/uploads/sites/21/2015/07/20150407_Guidance_for_Academia_on_Export_Controls_UpdatedCR.pdf>.

This document provides specific guidelines to universities on the export control legislation applicable in the UK and the Academic Technology Approval Scheme (Student Vetting Scheme). Section A provides a guide to the legislation (national, European and international). Section B suggests approaches to implementation.

Royal Netherlands Academy of Arts and Science (KNAW), 'Improving bio-security: Assessment of dual-use research' (Dec. 2013), <<https://www.knaw.nl/shared/resources/actueel/publicaties/pdf/advies-biosecurity-engels-web>>.

This document proposes a definition of dual-use research that can be applied in the context of biosecurity. It discusses how to assess dual-use research and who should make the assessment. The authors recommend the development of an assessment framework for biological research and the establishment of a Biosecurity Advisory Committee for Research in the Life Sciences.



The German Research Foundation and the National Academy of Sciences, ‘Scientific freedom and scientific responsibility: Recommendations for handling security-relevant research’ (May 2014), <https://www.leopoldina.org/uploads/tx_leopublication/2014_06_DFG-Leopoldina_Scientific_Freedom_Responsibility_EN.pdf>.

This document makes recommendations on ethically responsible research for individual scientists and—in particular—research institutions, such as on establishing general principles and carrying out risk analysis, risk minimization and publications evaluation. There is advice on forgoing research as a last resort, the communication of risks, training and personal responsibility. Institutions are also recommended to engage in awareness raising, establish compliance units, provide training, define ethics rules and establish ethics committees.

CODES OF CONDUCT AND EXPORT CONTROL POLICIES ESTABLISHED BY UNIVERSITIES AND RESEARCH CENTRES

Imperial College London, ‘UK export controls’ (Feb. 2010), <[http://www.imperial.ac.uk/media/imperial-college/research-and-innovation/research-office/public/Export-Controls-\[pdf\].pdf](http://www.imperial.ac.uk/media/imperial-college/research-and-innovation/research-office/public/Export-Controls-[pdf].pdf)>.

This document provides a short overview of British export control laws. It describes when export licences are required, the ‘potential impact areas’ (e.g. sponsored research activities, collaboration with international partners and transfers of material) and the ‘broad categories covered by export controls’. The document also explains the military and dual-use control lists, ‘end-use’ and the exemptions that might apply.

University of Oxford, University Administration and Services, Research Support website, ‘Guidance on export control legislation’, <<https://www.admin.ox.ac.uk/researchsupport/contracts/export/>>.

The Administration and Services website of the University of Oxford, under the section ‘Research Support’, has a page dedicated to ‘Guidance on Export Control Legislation’. The page provides an overview of the legal obligations of researchers under UK export control law, the key concerns of this legislation, red flags and important definitions.

McCafferty, Jennifer, ‘Export controls policy’ (Oct. 2015), University of Surrey, Research and Enterprise Support, <http://www.surrey.ac.uk/policies/export_controls_policy.pdf>.

The University of Surrey’s policy on export controls is a publicly available document that can be consulted directly on the website of the university. The main elements of the document are definitions, and an explanation of the legislative context, principles, procedures, governance requirements and exceptions to the policy. However, most of the key elements are not accessible to individuals from outside the university.



Robert Koch Institute, 'Dual use potential of life sciences research: Code of conduct for risk assessment and risk mitigation' (June 2013), <http://www.rki.de/EN/Content/Institute/Dual_Use/code_of_conduct.html>.

The code of conduct elaborated in this framework contains an introduction to the potentially dual-use nature of life science research, and the basic principles of review and preventing misuse, risk minimization, awareness raising and training. It also sets out criteria and a process for assessing the dual-use potential of research projects and their results.

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**STOCKHOLM INTERNATIONAL
PEACE RESEARCH INSTITUTE**

Signalistgatan 9
SE-169 72 Solna, Sweden
Telephone: +46 8 655 97 00
Email: sipri@sipri.org
Internet: www.sipri.org