



Object-Identification: Military and Civil Applications Versus Dual-Use in the European Union

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Privacy and Dual-Use: Ethical Reflections on Cognitive Image Understanding
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Dual-use items

A broad term that covers
several concepts

Was even acknowledged in ... fashion

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Sacs Longchamp Dual Use

6 Item(s)



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A few words about its origin

Has been defined and used firstly by nuclear export control : **Nuclear Suppliers Group** (NSG) in 1991

Discovering that controlling only the movements of nuclear « especially designed » goods and technologies didn't prevent against the risk of nuclear weapons proliferation

Guidelines for transfers of nuclear-related dual-use equipment, materials, software, and related technology (INFCIRC254.part2)

*With the objective of averting the proliferation of nuclear weapons ... suppliers have had under consideration procedures in relation to the transfer of **certain** equipment, materials, software, and related technology that could **make a major contribution** to a “nuclear explosive activity,” an “unsafeguarded nuclear fuel-cycle activity”*

Guidelines for transfers of nuclear-related dual-use equipment, materials, software, and related technology (INFCIRC254.part2)

Major contribution to

- “nuclear explosive activity,”
- “unsafeguarded nuclear fuel-cycle activity”

A **third term** was added after 2001

- *acts of nuclear terrorism.*

Contrary to the first one this last term has not been defined

Term has been adopted by other Export Control Regimes

MTCR uses it but does not provide an definition :

broad range of equipment and technology, both military and dual-use....

Australia Group used the term once in regard with the no-undercut policy without providing a definition

Term has been adopted by other Export Control Regimes

Wassenaar Arrangement applies it through all its basic documents and defined it as

goods and technologies which are critical for indigenous military capabilities

Even if for Russia and Ukraine it should be limited to *conventional munitions capabilities*

For the International Community

- No **legally binding** definition
- No **common understanding**

Term includes both items and technologies which could contribute to the development of

- **Weapons of mass destruction** and their **vectors**
- **Conventional weapons**

And for the European Union ?

Dual-use items are essentially associated with

- Proliferation of **weapons of mass destruction** and their **vectors**
- Proliferation of **conventional** weapons
- Acts of **terrorism** associated with the proliferation of WMD and conventional weapons
- Torture or other cruel, inhuman or **degrading treatment or punishment**
- Telecommunication or internet **monitoring** or interception items and technology

Dual-use items are essentially associated with

Used and defined by:

A legally binding document :

Council Regulation (EC) N° 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

A politically binding document:

Council Joint Action of 22 June 2000 (2000/0401/CFSP) concerning the control of technical assistance related to certain military end-uses

Article 2.1 of the Dual-Use Regulation

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;

Article 2.1 of the Dual-Use Regulation

The definition of dual-use items tries to combine together two different **understandings** of this term.

- The first refers to **military and non-military** purposes, i.e. the Wassenaar Arrangement, Australia Group and MTCR definition.
- The second refers to **nuclear and non-nuclear** purposes, i.e. the NSG definition.

The Regulation covers both brand **new and used items**

Are commercial transactions of **cognitive image understanding software** controlled by the Dual-Use Regulation ?

In order to be controlled four elements should be considered :

- Category of items
- Operations concerned
- End-use
- End-user (including the country of destination)

Category of items

In order to be controlled an item should be first listed in one of the **10 categories of Annex I** of the Dual-Use Regulation

Nuclear materials, Facilities and equipment, Special materials and related equipment, Materials Processing, Electronics, **Computers, Telecommunications and information security**, Sensors and lasers, Navigation and avionics, Marine Aerospace and Propulsion

Category of items

Software is one of the 5 **subcategories** of 10 categories

Systems, Equipment and Components, Test, Inspection and Production, Equipment, Materials, **Software**, Technology

Items are listed in view of their potential contribution to the development of WMD

Cognitive image understanding software could **marginally** contribute to the development of WMD

- By helping proliferators to find WMD components
- By assisting Public Authorities to identify the risky transactions

Use of the software might raise concerns regarding the protection of personal data

- **Principle defined by article 16 TFEU**

Everyone has the right to the protection of personal data concerning them.

- **A major concern of the EU Parliament**

Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012) 11 final)

Use of the software might raise concerns regarding the protection of political rights

Adoption by the EU of a legally binding instrument : Council Regulation 36/2012 concerning restrictive measures in view of the situation in Syria:

Adoption of a prohibition to export certain dual-use items related to telecommunication or internet monitoring or interception items and technology

Software supply raise concerns as regards certain end-use and end users

- End-use

Seeking for WMD components

- End users

Only if used by a proliferator
("rogue" States and or terrorists
groups)

End-Use/End users control instruments

- Catch-all clause provision
- Security exception

Catch-all clause

Possibility for Member States to control non-listed items

1. Member States' Authorities require, through a **notification to exporters**, an export authorisation for an item not listed ...

Catch-all clause

- If there is risk that this item might be used in **weapons of mass destruction program**
- When the final destination or the purchasing country is subject to an arms **embargo** decided by:
 - The EU Council of Ministers;
 - The OSCE;
 - The Security Council of the United Nations.

Catch-all clause

- If the exporter has been informed by the authorities ... 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

Catch-all clause

2. Obligation for the exporter to **notify** to his National Authorities if he is **aware** that an item he intends to export ...

If the first two catch-alls are compulsory for Member States, the Dual-Use Regulation has established a third one which is optional, i.e. “Suspicion clause”

Catch-all clause

3. Possibility to impose an export authorisation if the **exporter has grounds for suspecting** that the item ...

Has been adopted by Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Luxembourg, Malta, Poland, Slovakia, Spain and the United Kingdom

Security exception

Possibility for **Member State to prohibit or impose** an authorisation requirement for non-listed dual-use items for reasons of **public security or human rights considerations** (Article 8)
Implemented by France, Germany and the United Kingdom

Transaction to be controlled ?

- Software supply by **tangible** or **intangible** transaction
 - By email or downloading from a web server not necessarily located within the EU territory
- Providing assistance, **services** related to the controlled software **within or outside** of the EU to a **person** established outside of the EU
 - All hypothesis are not necessarily covered by the Dual-Use Regulation or the EU Joint action

Elements to authorize the transaction: Ethical Considerations ?

1. Authorisation is granted by Member States after assessment of **Common elements** defined by article 12:

- Commitments and obligations taken in the relevant **international non-proliferation regimes**
- Obligations under **sanctions imposed** by the CFSP, OSCE or a binding resolution of UN Security Council

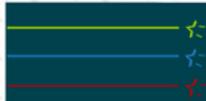
Elements to authorize the transaction: Ethical Considerations ?

- Consideration of **national foreign and security policies**, including those covered by the European Union Code of Conduct on Arms Exports
- Consideration of intended **end-use and risk of diversion**

2. Any other National considerations

To conclude

Relativity applies to physics, not ethics But relativity of its understanding might perhaps apply to dual-use transactions



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