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Whose Politics? Whose Rights? Transparency, Capture and Dual-Use Export Controls

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Аннотация

What kinds of politics do export controls entail and whose rights do they enable? The following article will take a critical perspective on the governance challenges associated with export controls of dual-use technologies. After discussing challenges around transparency, the performance of human rights and export control havens, this article will then turn to looking at policy solutions, including audits, transparency and targeted international governance mechanisms. With conclusion, export controls continue to constitute an important policy tool to promote human rights and can be improved considerably to strengthen human rights further.

Ключевые слова: human rights, export control, dual-use, transparency, digital technology

1. Introduction

After several years of negotiations, on 9 November 2020, the Council of the European Union (EU) and the European Parliament have reached a provisional political agreement regarding the EU's dual-use regulation[1]. This regulation has been intensely debated in expert circles for its shift in focus to human rights and human security since the publication of the Commission's proposal in 2016. Beyond expert conversations, however, it has been mostly absent from public debate, with only a few details discussed in the public domain. This is perhaps surprising given that the export of dual-use technologies is highly political, leading to the UN Special Rapporteurs Agnes Callamard and David Kaye to call for restrictions on the export of specific dual-use technologies and for the companies exporting them to take greater responsibility for their complicity in human rights abuses[2]. Dual-use technologies were purportedly used in the killing of Jamal Khashoggi, and one exporter of dual-use technologies is currently being sued by Facebook in connection with the Jamal Khashoggi case[3]. So, why are dual-use technologies not the subject of a wider debate about human rights and their role in society?

There are several reasons for this, the first of which is a lack of transparency. Dual-use technology exports and human rights justifications for these exports take place behind closed doors. As their export is not publicized, the widespread use of highly problematic technologies which enable human rights violations does

1. Council of the EU, New rules on trade of dual-use items agreed, Press release (9 November 2020), available at: https://www.consilium.europa.eu/en/press/press-releases/2020/11/09/new-rules-on-trade-of-dual-use-items-agreed/ (last accessed 15 November 2020).

2. David Kaye and Agnes Callamard, "UN Experts Call for Investigation into Allegations That Saudi Crown Prince Involved in Hacking of Jeff Bezos' Phone" (OHCHR, 2020) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25488> accessed 26 August 2020; David Kaye, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression" (United Nations 2019) A/HRC/41/35 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement>.

3. Raphael Satter, 'Experts Who Discovered Khashoggi Surveillance "Targeted by International Spies"' (The Independent, 2019) <https://www.independent.co.uk/news/world/middle-east/khashoggi-murder-citizen-lab-surveillance-internet-watchdog-experts-spies-toronto-a8747886.html> accessed 26 August 2020; Kaye and Callamard, supra note 2; Masashi Crete-Nishihata, "nso Group / Q Cyber Technologies: Over One Hundred New Abuse Cases" (The Citizen Lab, 2019) <https://citizenlab.ca/2019/10/nso-q-cyber-technologies-100-new-abuse-cases/> accessed 18 August 2020; Masashi Crete-Nishihata, "Dubious Denials & Scripted Spin: Spyware Company nso Group Goes on 60 Minutes – The Citizen Lab" (Citizen Lab, 2019) <https://citizenlab.ca/2019/04/dubious-denials-scripted-spin-spyware-company-nso-group-goes-on-60-minutes/> accessed 18 August 2020.

not appear to be a systematic issue, but rather an infrequent and limited issue. Second, the actors involved in performing human rights narratives used to justify the exports of technologies have little interest or incentive in an accurate portrayal of the actual human rights situation on the ground. This disconnect between the performance of human rights and its experienced reality poses considerable challenges to the accuracy and legitimacy of export control decision making. Third, there is a general lack of accountability for the claims made by exporters during the export control process. Their claims are not systematically audited by actors with significant knowledge of human rights. As a result, it is hard to ascertain the extent to which these narratives are systematically accurate or complete. Fourth, some jurisdictions have decided to become 'export control havens' which avoid any adherence to export controls at all. Here, similar approaches to responses to tax havens should be considered to ensure that meaningful compliance of dual-use technology exports is taking place on a global scale.

This article analyzes a raft of potential policy measures to increase the effectiveness of dual-use technology controls. It argues that focusing on measures which create transparency, accountability and accurate human rights narratives and prevent export control havens can help ensure a more effective dual-use governance regime. While many of the examples used here are based on digital surveillance technologies, the conclusions can be applied equally to other forms of dual-use technology. Strengthening the dual-use governance regime is critical to ensuring the protection of human rights in the digital age.

The article concludes that despite many challenges, there are numerous opportunities to strengthen human rights within the global export control regime. As Europe and the United States (US) are pushing forward in this area, current developments present a unique opportunity to strengthen both the global dual-use regime and the international human rights regime in equal measure.

2 Challenges

The following section will look first at some of the key policy responses associated with dual-use export controls. While the examples used are primarily from the EU, most of the challenges also apply to a wider global context beyond European borders.

2.1 Transparency

Transparency is the first dimension of challenges raised by these performances of human rights. As no independent human rights audit of these documents or effective mechanisms for complaints by human rights bodies is foreseen within the European Commission's 2016 proposal for a dual-use regime, it is hard to see how these ways in which human rights are performed could be congruent with the individual experience of human rights in the countries they are describing. This is particularly the case as none of the parties involved in the performance has the interest, expertise or capacity to meaningfully found their performance of human rights in real substantive knowledge. This problem is compounded by the entire performance taking place behind closed doors, without any transparency to the outside world about the trade in technologies and systems.

Notably, what little transparency exists in the relationship between dual-use technologies and human rights has not been primarily created by state authorities but by civil society, investigative journalism, academic research and citizen advocacy[4]. It is only through the work of these organizations and individuals that the public is aware of and able to debate the usage of dual-use surveillance technologies in Syria, Libya, Iran and Bahrain in ways that fundamentally undermine human rights.

At the same time, it should be noted that controlling digital communications technologies is a key aspect of governance in authoritarian regimes and typically closely linked to human rights abuses[5]. Even in democratic contexts, control of communications technologies, through internet filtering or surveillance is heavily contested[6]. Surveillance technologies play a central role in enabling

4. Vernon Silver, Italian Firm Said to Exit Syrian Monitoring Project – Bloomberg (2011) <http://www.bloomberg.com/news/2011-11-28/italian-firm-exits-syrian-monitoring-project-repubblica-says.html>; Vernon Silver, Cyber Attacks on Activists Traced to FinFisher Spyware of Gamma (2012) <http://www.bloomberg.com/news/2012-07-25/cyber-attacks-on-activists-traced-to-finfisher-spyware-of-gamma.html>; Tim Maurer, Edin Omanovic and Ben Wagner, "Uncontrolled Global Surveillance: Updating Export Controls to the Digital Age" (New America Foundation, Digitale Gesellschaft and Privacy International 2014) March; fidh, "Surveillance Technologies "Made in Europe": Regulation Needed to Prevent Human Rights Abuses" (2014); Wenzel Michalski and Ben Wagner, Should Companies Take Responsibility for Repression? (2013) <http://globalpublicsquare.blogs.cnn.com/2013/02/13/should-companies-take-responsibility-for-repression/>; Ben Wagner, "Exporting Censorship and Surveillance Technology" (The Humanist Institute for Development Cooperation, Hivos 2012) <http://www.hivos.nl/eng/Hivos-Knowledge-Programme/Themes/Digital-Natives-with-a-Cause/Publications/Exporting-Censorship-and-Surveillance-Technology>; Ben Wagner and Claudio Guarnieri, "Nicht-Lizenzierte Exporte: Deutsche Unternehmen Verdienen Millionen Mit Überwachungstechnologien" in Markus Beckedahl and Andre Meister (eds), Jahrbuch Netzpolitik 2014 (Netzpolitik 2014); Crete-Nishihata, "nso Group / Q Cyber Technologies," supra note 2.

authoritarian practices across the world[7]. However, it is not just the surveillance of human beings that enables authoritarian governments. This is also combined with the impression they create of being able to invade and control the private lives of those being surveilled. Such broad exercise of authoritarian power contributes to the chilling effect of authoritarian governance, restricting voice and choice while considerably limiting individual and collective access to human rights. Censorship and surveillance technologies have been linked to government repression and human rights abuses during the conflict in Syria[8], torture in Bahrain[9] and Libya[10], and the extrajudicial killing of the journalist Jamal Khashoggi[11].

Given the highly questionable performances of rights performed within export licensing applications, it seems most appropriate that such requests be made public as soon as possible. Organizations and individuals who wish to make claims about the human rights situation across the world should also be willing to do so publicly and transparently. Making licensing applications public would also contribute to ensuring that their claims about human rights are publicly available and can, to some degree, be publicly scrutinized. Important claims about human rights associated with the exports of goods could no longer be made in darkness but would have to stand up to public scrutiny. When they are presented in public, claims

5. Ben Wagner, "Authoritarian Practices in the Digital Age| Understanding Internet Shutdowns: A Case Study from Pakistan" (2018) 12 International Journal of Communication 22; Ben Wagner, "After the Arab Spring: New Paths for Human Rights and the Internet in European Foreign Policy" (European Union 2012) <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>; Ben Wagner, "Freedom of Expression on the Internet: Implications for Foreign Policy" [2011] Global Information Society Watch 18.

6. Ben Wagner, "The Politics of Internet Filtering: The United Kingdom and Germany in a Comparative Perspective" (2014) 34 Politics 58.

7. Marcus Michaelsen, Silencing Across Borders: Transnational Repression and Digital Threats against Exiled Dissidents from Egypt, Syria and Iran (Hivos 2020).

8. BlueCoat: US Technology Surveilling Syrian Citizens Online – Global Voices Advocacy <http://advocacy.globalvoicesonline.org/2011/10/10/bluecoat-us-technology-surveilling-syrian-citizens-online/>; Ben Elgin and Vernon Silver, Syria Crackdown Gets Italy Firm's Aid With U.S.-Europe Spy Gear – Bloomberg (2011) <http://www.bloomberg.com/news/2011-11-03/syria-crackdown-gets-italy-firm-s-aid-with-u-s-europe-spy-gear.html>.

9. Vernon Silver and Ben Elgin, Torture in Bahrain Becomes Routine With Help From Nokia Siemens (2011) <http://www.bloomberg.com/news/2011-08-22/torture-in-bahrain-becomes-routine-with-help-from-nokia-siemens-networking.html> accessed 28 August 2011; David Mepham, Don't Kid Yourselves: Bahrain Hasn't Changed (2012) <http://www.hrw.org/news/2012/04/18/don-t-kid-yourselves-bahrain-hasn-t-changed> accessed 10 May 2012.

10. Paul Sonne and Margaret Coker, Foreign Firms Helped Gadhafi Spy on Libyans (2011) <http://online.wsj.com/article/SB10001424053111904199404576538721260166388.html> accessed 23 September 2011.

11. Tarek Cherkaoui and Ravale Mohydin, "Murder in the Consulate: The Khashoggi Affair and the Turkish-Saudi War of Narratives" (2020) 7 The Political Economy of Communication; Marko Milanovic, "The Murder of Jamal Khashoggi: Immunities, Inviolability and the Human Right to Life" (2020) 20 Human Rights Law Review 1.

about human rights rarely stand up to any kind of scrutiny[12], yet the majority of claims of this kind are not even publicly known[13].

2.2 Performing Human Rights

To effectively administrate dual-use export controls, nation-states have created administrative structures to manage licensing requirements. These agencies—the Bureau of Industry and Security (bis) in the US, bafa in Germany, Service des Biens à Double Usage (sbdu) in France, or Defense Export Control Agency (deca) in Israel—are considered the competent authorities under the EU's export control regime[14]. The primary task of these agencies is to assess the validity of license requests provided to them by exporters. What was particularly interesting about these requests under the new exports controls regime proposed by the European Commission in 2016 was that the agencies were increasingly being asked to assess the human rights situation in respective countries as well as the impact on human rights of specific goods or services being provided. As argued by Machiko Kanetake, "[h]uman rights-based export control requires EU institutions and national authorities to use their own assessments of the human rights situation of the third country to which cyber technology is exported[15]." The organizations and individuals seeking export licenses are performing a human rights narrative about specific goods and services, and the export control agencies are attempting to assess whether this narrative is accurate and whether the export should be justified.

In numerous conversations with export control agencies and governmental agencies that support them—such as the Ministry of Economics or the respective national intelligence services—the author of this article has been informed time and time again that these government agencies do not see themselves as competent to assess the human rights situation themselves and they do not have the resources to develop this kind of capacity in the foreseeable future. This position is mirrored by organizations tasked with

12. Crete-Nishihata, "Dubious Denials & Scripted Spin: Spyware Company nso Group Goes on 60 Minutes – The Citizen Lab," supra note 3.
13. Merel Koning, "EUR0125562020ENGLISH.PDF" <https://www.amnesty.org/en/documents/EUR01/2556/2020/en/>.
14. European Commission, "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Setting up a Union Regime for the Control of Exports, Transfer, Brokering, Technical Assistance and Transit of Dual-Use Items (Recast)" <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0616:FIN>.
15. Machiko Kanetake, "Balancing Innovation, Development, and Security: Dual-Use Concepts in Export Control Laws" in N Craik (ed), Global Environmental Change and Innovation in International Law (Cambridge University Press 2018).

fulfilling export control requirements, who typically present export controls as an unnecessary regulatory hoop to jump through[16]. Faced with what they see as an unnecessary regulatory burden, their performance of the human rights situation and the depiction of their product is equally problematic.

Given this inauspicious starting point, it should not be surprising that neither the depiction of human rights provided in applications for export control licenses nor the assessment of the human rights situation is particularly accurate. As the process takes place under considerable time constraints for commercial reasons, the likelihood of either side considering the human rights dimensions in a meaningful way diminishes further. The result is to disconnect the performances of rights by exporters and export control agencies from the actual human rights situation in the countries where products are exported.

2.3 'Export Control Havens'

The focus on audits and accountability is particularly important, given that many jurisdictions avoid this very limited implementation of export control rules. Instead, they see unlimited exports of dual-use technologies as a competitive advantage in an analogous manner to countries accused of a highly limited implementation of corporate taxation[17] or data protection rules[18]. As noted by an Israeli surveillance technology vendor when discussing the evasive behavior of their competitors:

> "They're opening companies in countries where you don't have regulation mechanisms, in Latin America, Europe, the Asia Pacific region—where regulation is very weak, so you can export to countries that you cannot

16. bafa, "bafa – Außenwirtschaft – 11. Exportkontrolltag" (BAFA, 2017) <https://www.bafa.de/SharedDocs/Termine/DE/Aussenwirtschaft/2017_ekt.html> accessed 21 August 2020; Crete-Nishihata, "nso Group / Q Cyber Technologies," supra note 3; Elgin and Silver, supra note 8.

17. Aija Rusina, "Name and Shame? Evidence from the European Union Tax Haven Blacklist" [2020] International Tax and Public Finance 1; Grant Richardson, Grantley Taylor and Ivan Obaydin, "Does the Use of Tax Haven Subsidiaries by US Multinational Corporations Affect the Cost of Bank Loans?" [2020] Journal of Corporate Finance 101663; James Nebus, "Will Tax Reforms Alone Solve the Tax Avoidance and Tax Haven Problems?" (2019) 2 Journal of International Business Policy 258.

18. Harpo Vogelsang, "An Analysis of the EU Data Protection Policy and the Significance of the Maximillian Schrems Case" (bs thesis, University of Twente 2019); David Flint, "Perhaps the Longest Obiter Dicta Ever?" (2020) 41 Business Law Review; Nir Kshetri and Jeffrey Voas, "Thoughts on General Data Protection Regulation and Online Human Surveillance" (2020) 53 Computer 86; TJ McIntyre, "Regulating the Information Society: Data Protection and Ireland's Internet Industry" [2020] The Oxford Handbook of Irish Politics (Oxford: Oxford University Press, forthcoming 2020).

> export to from Israel or other places in Europe," he explains. "I see companies trying to hide activity by changing the name of the company over and over again. Or through mechanisms like building research and development in one site, sales cycle to a different company, deployment through a third company, so you cannot trace who is doing what […] Not all countries are part of the Wassenaar agreement. I truly think it's very hard to do something international. Obviously, international is a great idea, but just like there are countries that act as tax shelters, there are countries that act as export regulation shelters. Those countries need global mechanisms of regulation[19]."

When even heavily criticized vendors of dual-use technologies are loudly calling for regulation, it suggests that something is amiss in this industry. Of course, it is easy to dismiss these claims as an attempt to gain a competitive advantage. In this case, it seems that the existing dynamics of dual-use controls are leading to a regulatory race to the bottom, in which existing governance mechanisms need to be adapted to respond to this new reality.

3 Policy Responses

Given the bleak description of the many serious challenges around export controls, some readers might wonder whether export controls are a workable proposition. Despite some of the fundamental problems, it is undeniable that export control can serve as a vital tool to mitigate ongoing risks to human rights. Despite their flaws, they remain a surprisingly effective mechanism at limiting the spread of harmful dual-use technologies. However, in the EU in particular, which wishes to set high standards on human rights and good governance, it is important to develop the existing export controls regime further to ensure they live up to these standards. There are numerous mechanisms by which export controls can be developed to ensure their effectiveness.

19. Patrick Howell O'Neill, "The Man Who Built a Spyware Empire Says It's Time to Come out of the Shadows" (MIT Technology Review) <https://www.technologyreview.com/2020/08/19/1007337/shalev-hulio-nso-group-spyware-interview/> accessed 21 August 2020.

3.1 Strengthening International Governance to Avoid Export Havens

The suggestion that some countries see themselves as global export regulation shelters is not new. At an international level, there are a limited number of tools that can be used to prevent the behavior described in Section 2. Existing problems are in no small part due to the politicization of the existing dual-use regime, which is closely linked to political calculations around proliferation[20].

The existing dual-use regime both excludes some countries from technologies which would be valuable for their development while excluding others for strategic or geopolitical reasons. This approach is not sustainable in the long term. For export controls to be effective, they should be implemented effectively by as many states as possible. The Wassenaar Arrangement should open its doors to a larger number of member states, and other international organizations beyond the EU, such as the UN and the osce, should move beyond export control to develop binding arms control frameworks[21].

As the approach proposed above is likely to take many years, there are shorter-term goals that can be achieved until then. Here, the dual-use regime can learn from existing measures used to combat tax havens. More specifically, national and regional measures to blacklist countries which act as export control havens are likely to be particularly effective. However, such a process can only be effective if an alternative to a spot on these blacklists exists. Here, a mechanism to ensure the adequacy of export control mechanisms at an EU level should be established, similar to what already exists for data protection adequacy decisions under the EU's General Data Protection Regulation[22]. Achieving this kind of export control adequacy would also open the door for allowing additional dual-use

20. A Idiart, Export Control Law and Regulations Handbook: A Practical Guide to Military and Dual-Use Goods Trade Restrictions and Compliance (Kluwer Law International 2011); Marietje Schaake, "Parliamentary Question: vp/hr—Inquiry into Role of European Companies in Human Rights Violations (Part ii) and the Export of Dual-Use Technologies" (2011) <https://www.marietjeschaake.eu/en/parliamentary-question-vphr-inquiry-into-role-of-european-companies-in-human-rights-violations-part-ii-and-the-export-of-dual-use-technologies?color=secondary> accessed 9 February 2018; H Hohmann and K John, "Kommentar; Mit eg-Dual-Use-Verordnung, eg-Ausfuhrverordnungen, Aussenwirtschaftsgesetz, Aus Senwirtschaftsverordnung, Kriegswaffenkontrollgesetz".

21. Mark Bromley, Neil Cooper and Paul Holtom, "The UN Arms Trade Treaty: Arms Export Controls, the Human Security Agenda and the Lessons of History" (2012) 88 International Affairs 1029; Ron Smith and Bernard Udis, "New Challenges to Arms Export Control: Whither Wassenaar?" (2001) 8 The Nonproliferation Review 81; Ben Wagner and Joanna Bronowicka, "Between International Relations and Arms Controls: Understanding Export Controls for Surveillance Technologies" (2015) 3 Political Review (Przegląd Politologiczny) 153.

trade between the EU and the countries declared adequate, although such a decision could not be automatic. Moving decisions on the adequacy of dual-use mechanisms away from the Wassenaar Arrangement and towards EU institutions would also contribute to developing global standard-setting at an EU level and ensure that human rights are meaningfully considered in this context.

3.2 External Audits

Another dimension urgently lacking in this context is regular external oversight of the decisions made by these "competent authorities" by institutions competent to assess human rights. These audits could be conducted either by national human rights bodies, such as the Danish Institute for Human Rights, the European Union Fundamental Rights Agency, the Council of Europe, or other similar organizations with a relevant human rights background. Regardless of which organizations or individuals are involved, a strong auditing framework to ensure the independence and accountability of the auditors in question goes beyond the scope of this article, although inspiration can certainly be drawn from other areas[23].

Auditing a representative sample of the claims made on human rights would provide a greater understanding of the extent of human rights compliance within export control organizations. It would also provide competent authorities with some much-needed assistance for existing authorities to be able to assess the extent to which their everyday practices are in line with existing human rights standards. Particularly in the EU, such a systematic analysis of the standards of human rights implemented by individual competent authorities could be highly valuable in ensuring a level playing field throughout the EU. This is particularly important, as one of the core goals of the Commission's 2016 dual-use proposal was to ensure a level playing field between member states. Human rights audits of a representative sample of the actual export control licenses and their claims about human rights in each EU member state would contribute to making the playing field in this area more level and much clearer.

22. Duque de Carvalho and Sara Leonor, "Key gdpr Elements in Adequacy Findings of Countries That Have Ratified Convention 108" (2019) 5 Eur. Data Prot. L. Rev. 54; Laura Drechsler, "What Is Equivalent? A Probe into gdpr Adequacy Based on EU Fundamental Rights", Jusletter IT (21 February 2019); Laura Drechsler, "Comparing led and gdpr Adequacy: One Standard Two Systems" (2020) 1 Global Privacy Law Review.

23. Brandon Gipper, Christian Leuz and Mark Maffett, "Public Oversight and Reporting Credibility: Evidence from the pcaob Audit Inspection Regime" [2019] The Review of Financial Studies; Drechsler (2019), ibid.

3.3 Transparency and Enabling Different Performances of Rights

As discussed in the previous section, human rights are often performed by actors who have little interest in an accurate portrayal of human rights, which is enabled by a lack of transparency around claims about human rights. Consequently, to ensure that the claims made around human rights in the export control process are accurate, they should be made public to the greatest extent possible. Ideally, all positive and negative export license applications should be made public, with minimal redactions to ensure the anonymity of the exporter and the exact name of the product. There seems to be no obvious commercial reason why descriptions of the human rights situation in a specific country that are the basis for an export license or its rejection should not be made public.

Transparency also has an additional valuable benefit in that it enables additional stakeholders to assess the extent to which this description of human rights is accurate. While external auditors are certainly competent in their ability to do this, those most likely to be competent in their assessment of the human rights situation on the ground are those directly affected by it. Thus, it would be highly valuable to allow local civic groups in a specific country to be able to see how their human rights situation is being portrayed by companies wishing to conduct exports to the country in which these civil society groups are based. Allowing these civil society groups to weigh in on the claims made about human rights would be highly valuable, going beyond external audit to increase the quality of performances made about human rights and ensure that these performances are scrutable by those who know the most about them.

Given that creating a transparency mechanisms that will only be effective if accompanied by civil society scrutiny also puts a considerable burden on local civil society groups, another approach could be to connect licensing requests to existing mechanisms for human rights review within the UN, such as the Universal Period Review (upr) mechanism[24]. By connecting licensing requests to the upr, competent agencies would have a regular systematic check on the information being provided by dual-use licensing applicants, while the exact nature of such a connection would need to be explored.

24. On upr, see Charlesworth, H., & Larking, E. (2014). Human rights and the universal periodic review. Cambridge University Press.

4 Conclusion

Export controls are not a panacea for all human rights problems. They will not be able to prevent all abuses or solve all imaginable problems. However, they do provide a valuable basis for additional development of the international dual-use regime in a manner that supports human rights more effectively. At a time when the EU updates the existing EU dual-use regime, it is hoped that this article can provide some ideas on how Europe can move forward and development of the implementation of the new dual-use regulation.

More broadly, increasing human rights mechanisms in dual-use controls are increasingly being explored outside of Europe, with the United States integrating additional levels of human rights compliance to existing export control mechanisms in recent years. If Europe does not wish to be left behind in using export controls to promote human rights, it should consider more effective mechanisms to strengthen both the global governance of human rights regime and export controls in equal measure.