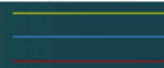




Balancing the freedom of academia and security interests : an impossible objective ?

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Academic activities

- **Teaching:** lectures, seminars, training sessions

In and out (or both), to national or/and foreign audience, fundamental and/or applied courses

- **Research:** directing research (PhD), conducting research (fundamental and industrial)

Principle

Balance between academic freedom and State security interests induces the **double assumption** that :

- Academics are or should be **aware** of WMD proliferation potential applications of their activities
- Regulators/licensing authorities are or should have a **comprehensive view** of national academies and their activities potentially concerned by WMD

Therefore

Academics should

- **Constrain themselves** if they are aware of potential proliferation risks in their research

Debate occurred at the end of the thirties among scientists around the possibility to develop an atomic bomb (nuclear fission and possibilities of chain reaction)

Therefore

- Academics **should inform** their national export control authorities of potential WMD risks **if they intend** to transfer dual-use items or technology and obtain, if necessary, **their prior consent**

Might be perceived as a breach to **academic freedom**

Academic Freedom ?

No international legally binding definition

- **UNESCO Resolution** November 1997
- **Council of Europe Recommendation** 1762 (2006) Academic freedom and university autonomy
- **Magna Charta Universitatum** (Bologna process)

An EU legally binding instrument

- article 6 of TFUE: **Charter of fundamental rights of the European Union** (article 13)

Charter of fundamental rights of the European Union

Article 13

*The arts and scientific research shall be free of constraint. **Academic freedom** shall be respected.*

Council of Europe Recommendation 1762 (2006)

4. In accordance with the Magna Charta Universitatum, the Assembly reaffirms the **right to academic freedom** and university autonomy which comprises the following principles:

4.1. academic freedom in research and in training should guarantee freedom of expression and of action, **freedom to disseminate information** and freedom to conduct research and **distribute knowledge and truth without restriction;**

EU Academic Freedom ?

- Terms included but not necessarily defined by **EU Member States** legislation
- Assimilated by certain Member States to the **freedom of speech**
- **28 potential understandings** of the term and its content

Irish universities Act of 1997

14 (1) A university, in performing its functions shall
(a) have the right and responsibility to preserve and promote the **traditional principles of academic freedom in the conduct of its internal and external affairs**, and (...)

14 (2) A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, **research** and any other activities either **in or outside the university**, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, ...

Limits to Academic Freedom to protect national security interests

- No comprehensive studies
- Controversial in the **US** even if 1985 Presidential directive has excluded fundamental research from export controls (cold war context)
- In the **EU**
 - Links to the usual limits applied to the freedom of speech
 - Public order and national security have been invoked

February 2013 Amendment to Latvia Law on Scientific Activity

- Latvian scientist might have to “**discontinue** scientific research if it, per the determination of state security agencies, may lead to a **threat of national security**” (Article 6, paragraph 5)
- Under this provision, the determination of danger from scientific research would be made not by the academic or scientific community, but by the **intelligence agencies.**

Balancing security interests and academic freedom

The double assumption (awareness of academics and regulators) is based on a **conceptual understanding of the academic world** that doesn't necessarily match academic research policy and its working method

Essentially valid for

Teaching activities

- Topics, objectives, detailed contents and supporting documents are defined in advance : WMD risk assessment could be conducted before “delivery”
- Audience could be identified and controlled (authorisation to assist, visa, ...)

Essentially valid for

- **Military research activities**

Defined end-use, supported and controlled by the Ministry of Defence

- **Contractual research related to biological, chemical, nuclear and space technologies**

Could include in the contract WMD awareness considerations

Example: EU Programme for Research and Technological Development

FP7 (2007- 2013)

- EU's main instrument for funding research in Europe (€ 50,5 billion)
- Also an essential (and main) instrument for EU Academies to support their research
- Includes in its general conditions a **broad security provision**

Grant Agreement - Annex II – General Conditions - II 27 Transfer

*Where a beneficiary intends to **transfer** ownership of foreground to a third party established in a third country **not associated** to the Seventh Framework Programme, the Commission **may object to such transfer** of ownership of foreground, if it considers that this is not in accordance with the interests of developing the competitiveness of the European economy or is inconsistent with ethical principles or **security considerations**.*

Grant Agreement - Annex II – General Conditions - II 27 Transfer

*In such cases, the transfer of ownership shall not take place unless the Commission is **satisfied that appropriate safeguards** will be put in place and has authorised the transfer in writing.*

Grant Agreement - Annex II – General Conditions - II 27 Transfer

*In projects funded by Euratom, security considerations must be understood as being the **defence interests of the Member States** within the meaning of Article 24 of the Treaty establishing the European Atomic Energy Community.*

Principle is difficult/ impossible to apply to dual- use items

- No international definition of “dual-use items”
 - Essentially, list of dual-use items completed by catch-all provisions
- No mapping of universities conducting research related or potentially related to dual-use items
- Most research programmes involve a network of institutions not necessarily established in the same country

Academies are not manufacturers or exporters

- In principle no regular commercial transactions
- Indirectly exporting intangible technology
- Unless they have manufacturing activities
 - Soft science could also proliferate
- High international mobility of researchers
- Diversity of research institutions

Regulation 428/2009

article 2.3

Do academics match exporter definition ?

"**exporter**" shall mean any natural or legal person or partnership:

(i) on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, **holds the contract** with the consignee in the third country and **has the power** for determining the **sending of the item out of the customs territory** of the Community

Regulation 428/2009

article 2.3

If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has **the power for determining the sending** of the item out of the customs territory of the Community;

(ii) which decides to transmit or **make available** software or technology by **electronic media** including by fax, telephone, electronic mail or by any other electronic means to a destination outside the Community.

Fundamental and industrial research

Universities core research activities are fundamental research

*Experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, **without any direct practical application or use in view***

Fundamental Research

- Potential end-uses are **unknown** during the research
- End-uses are not an **objective** for the researcher
- End-users are difficult to **identify**

Usually, access to publications are not restricted

Fundamental Research

Research results will be published **before** WMD proliferation risks could be assessed

- Prior screening of all fundamental research is almost impossible and will not necessarily detect potential risks

Output unknown

- Potential risks could be assessed **only if** the research involves dual-use items or if the field of research is submitted to specific requirements

Does Fundamental Research could be considered as export?

Example of Regulation 428/2009

2. "**export**" shall mean:

- (i) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92 (the Community Customs Code)
- (iii) transmission of software or **technology** by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the European Community...

Does Fundamental Research could be considered an export?

Article 161

1. *The export procedure shall allow Community **goods to leave** the customs territory of the Community. Exportation shall entail the application of **exit formalities** including commercial policy measures and, where appropriate, export duties.*

Does Fundamental Research could be considered as export?

Technology ?

Not defined but the Annex excludes

- technology which derives from the public domain
- Technology necessary for the basic scientific research

No common definition of the exception

28 potential understandings of the term and its content

Principle in contradiction with Academic organisation

For academics it is **essential to publish** their research results as early as possible:

- To obtain **international recognition** of the scientific community (scientific awards);
- To hold intellectual **property rights**;
- To obtain further **financing** for their research;

But also due to the direct influence on their **career evolution** (ranking system)

Conclusion

Balancing academic freedom and security interests : **a conceptual necessity**

Identification of actors, fields and research outputs

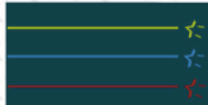
Assessing Academia WMD proliferation risks: a none issue ?

Very few cases but not insignificant (A.Q. Khan, Fouchier/Kawaoka (mutation of genetic sequence of H5N1))

Conclusion

Fundamental review of legal provisions related to Academics might be a necessity

Including specific provisions in Trade Control Regimes in the line of what has been done for brokering or transit



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