

The project aims to clarify the concept of corporate due diligence in dual-use export and to bring certainty to private companies exporting dual-use items to conflict zones in the light of increasing applications of algorithmic systems. It argues that the lack of a due diligence obligation for dual-use exporters in the European Union (EU) significantly limits the company's ability to prevent adverse impacts of their activities on human rights. Algorithmic systems additionally challenge the ability to determine what belongs to a category of dual-use items, thus complicating due diligence assessments by companies.

Based on input data, algorithms can suggest or make a decision for the given task. They have increasing applications in both civil and military contexts. Despite sanctions and tightened export controls that require state authorisation, EU-exported dual-use items are used by Russia in Ukraine to launch indiscriminate attacks and to commit serious violations of international humanitarian law. Political dissidents and human rights defenders were repressed by the EU-exported dual-use items during the Arab Spring, in clear violation of international human rights law. Consequently, dual-use exports to conflict zones are particularly vulnerable to causing individual harm. The paradox of dual-use items is that, unlike weapons, they can be used both by the military in active hostilities, in the context of regular law enforcement, or for civil purposes. Due to new opportunities dual-use items create for final users and the scale of export, the current definitional and normative contexts of dual-use export are insufficient to prevent or mitigate harm or damage caused by these items within conflict zones. Firstly, the EU exporters' primary aims are to maximise profits and remain competitive in the market while, at the same time, keeping an international reputation and acting as corporate keepers of democratic values in their supply chains. Secondly, individuals have limited tools to prevent or address the harm to which EU exporters provided the necessary tools. It tries to balance individual-based (e.g., right to life, right to security) and collective-based (including commercial competitiveness) interests. At the same time, with the increasing development of algorithmic decision systems across various industries, the tendency of companies to risk contributing to human rights violations will grow. In consequence, dual-use exporters may harm individuals by the products coming from the EU and being dual-use. The patch worked laws and policies concerning corporate due diligence and lack of corporate obligations in dual-use export control create a gap that severely prevents private companies from taking human rights into account. Although it may seem that with the adoption of the Directive on Corporate Sustainability Due Diligence the EU law has taken a step towards shaping due diligence obligations of dual-use exporters to address individual harm, it took a step back by excluding export control from secondary legislation on due diligence. In consequence, the new EU law is vague, and the existence of a corporate obligation of due diligence to prevent individual harm remains unclear. My hypothesis is that – in practice – this weakens the ability of dual-use exporters to comply with human rights.

The project will be conducted over a period of 36 months and will be divided into three stages. The first stage will be based on data collection of human rights harms caused by dual-use items exported from the EU and re-conceptualising the concept of a dual-use item in light of algorithmic systems. The second stage will be devoted to interviewing 20 dual-use exporters from the EU. This empirical study aims to assess and interpret the perception of dual-use exporters of due diligence assessments through the lenses of EU law and human rights language. The third stage will include a theoretical analysis of corporate due diligence under the EU law and business and human rights framework.

The expected outcomes of the project are as follows:

- 1) Collecting data on the factual background of adverse human rights impact of the EU dual-use export in conflict zones;
- 2) Reinterpreting the term 'dual-use item' in the light of algorithmic decision systems;
- 3) Providing quantitative and qualitative analysis of interviews;
- 4) Identifying corporate due diligence as a legally informed empirical concept relevant for dual-use export.