



# **The EU as a Regional Actor: Weapons of Mass Destruction**

**Sijbren de Jong, Steven Sterkx & Jan Wouters**

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## EU-GRASP

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## Abstract

The EU enacts its security policy on different levels and through various frameworks and structures of cooperation. One of these levels is the regional dimension (i.e. within the Union) where the EU acts as a regional security actor. This paper looks at weapons of mass destruction (WMDs) by assessing (i) the institutional dimension underpinning this issue, (ii) the EU's policy output in the field of WMDs, and (iii) an evaluation of the Union's institutional and output dimension. This 'check-up' of EU policy through the assessment of its coherence, the current levels of accountability, and the legitimacy of EU action enables a reflection on the merits of EU policy in the security field.

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# **The EU as a Regional Actor: Weapons of Mass Destruction<sup>1</sup>**

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## **Introduction**

Weapons of Mass Destruction (WMDs) dominated the security agenda throughout the Cold War. The end of the Cold War sparked a new approach to the discussion on WMDs, and called for the development of new policy aimed at the gradual removal and the safe handling of WMDs, as well as the “ingredients” that produce such weaponry. The EU has since its inception taken an active stance on the issue and produced a wide range of policy measures.

This paper firstly provides an overview of WMD policy in recent history, as well as a description of its institutional dimension. Secondly, an overview is given of the Union’s policy output and legal instruments in the field of non-proliferation at the EU level. Thirdly, an evaluation is made of the Union’s policy coherence, the checks and balances on its output as well as its legitimacy in combating WMDs.

## **The Institutional Dimension of WMDs**

The arms race of the Cold War saw the US and the Soviet Union, the only two real superpowers of that time, holding the world in a bipolar power struggle from the mid-1940s until the early 1990s. The Cuban missile crisis of October 1962 is popularly seen as constituting the absolute height of the Cold War. This is as close as the world ever came to a nuclear war. In 1963 the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (also known as the

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<sup>1</sup> An earlier version of this paper was presented at an EU-GRASP workshop in July 2009 hosted by UNU-CRIS.

Partial Test Ban Treaty (PTBT)) was signed by the Soviet Union, the United Kingdom and the US.<sup>2</sup> The Nuclear Non-Proliferation Treaty (NPT) was opened for signature in 1968<sup>3</sup>, and 1969 saw the start of the bilateral Strategic Arms Limitation Talks (SALT) between the US and the Soviet Union. SALT refers to two rounds of bilateral talks (SALT I and SALT II) and the corresponding international treaties between the US and the Soviet Union.

SALT I, or the Strategic Arms Limitation Talks Agreement, also known as Strategic Arms Limitation Treaty, froze the number of strategic ballistic missile launchers at existing levels, and provided for the addition of new submarine-launched ballistic missile (SLBM) launchers only after the same number of older intercontinental ballistic missile (ICBM) and SLBM launchers had been dismantled. Negotiations began in Helsinki, Finland, in November 1969 and lasted until May 1972. The negotiations ended with the signature of the Anti-Ballistic Missile Treaty on 26 May 1972<sup>4</sup> and the Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures With Respect to the Limitation of Strategic Offensive Arms.<sup>5</sup> In that same year, as a result of prolonged efforts by the international community to establish a new instrument that would supplement the 1925 Geneva Protocol<sup>6</sup>, the Biological and Toxin Weapons Convention (BTWC)<sup>7</sup>, the first multilateral disarmament treaty banning the production and use of an entire category of weapons, was opened for signature on 10 April 1972. The BTWC entered into force on 26 March 1975. However, the absence of any formal verification regime to monitor compliance has limited the effectiveness of the Convention.

The SALT II negotiations took place between 1977 and 1979 and sought to achieve real reductions in strategic nuclear weapons. The SALT II Treaty banned new missile programs, obliging both the US and the Soviet Union to limit the development of new strategic missiles. An agreement to limit

<sup>2</sup> *Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water*. Currently 106 Parties are signatories to the Treaty. Available at: [http://www.un.org/disarmament/WMD/Nuclear/pdf/Partial\\_Ban\\_Treaty.pdf](http://www.un.org/disarmament/WMD/Nuclear/pdf/Partial_Ban_Treaty.pdf) [Accessed May 2009].

<sup>3</sup> *Treaty on the Non-Proliferation of Nuclear Weapons*. Currently 92 Parties are signatories to the Treaty. Available at: [http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish\\_Text.pdf](http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish_Text.pdf) [Accessed May 2009].

<sup>4</sup> *Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems*. Available at: <http://www.fas.org/nuke/control/abmt/text/abm2.htm> [Accessed May 2009].

<sup>5</sup> *Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures With Respect to the Limitation of Strategic Arms*. Available at: <http://www.fas.org/nuke/control/salt1/text/salt1.htm> [Accessed May 2009].

<sup>6</sup> Geneva Protocol, 1925. *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*. The Protocol was drawn up and signed at the conference for the supervision of the international trade in arms and ammunition, which was held in Geneva under the auspices of the League of Nations from 4 May to 17 June 1925, and it entered into force on 8 February 1928. Currently 38 Parties are signatories to the Protocol. Available at: [http://www.un.org/disarmament/WMD/Bio/pdf/Status\\_Protocol.pdf](http://www.un.org/disarmament/WMD/Bio/pdf/Status_Protocol.pdf) [Accessed May 2009].

<sup>7</sup> *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*. Currently 108 Parties are signatories to the Convention. Available at: [http://www.un.org/disarmament/WMD/Bio/pdf/Text\\_of\\_the\\_Protocol.pdf](http://www.un.org/disarmament/WMD/Bio/pdf/Text_of_the_Protocol.pdf) [Accessed May 2009].

strategic launchers was reached in Vienna on 18 June 1979.<sup>8</sup> Six months after the signing of the Agreement, the Soviet Union invaded Afghanistan. The Agreement was nonetheless honoured by both the US and the Soviet Union until the Reagan Administration withdrew from SALT II in 1986. In 1987 the Missile Technology Control Regime (MCTR) was established. The MCTR is an informal and voluntary association of countries which work towards the non-proliferation of unmanned delivery systems capable of delivering WMDs, and which seek to coordinate national export licensing efforts aimed at preventing their proliferation.<sup>9</sup>

The successor to the SALT Treaties was the Strategic Arms Reduction Treaty (START). The first START proposal was initiated by US President Ronald Reagan on 29 June 1982. It proposed a significant reduction in strategic forces in two phases. The START negotiations were delayed several times between the early 1980s and 1990s, either due to US or Soviet initiatives. The Treaty was finally signed on 31 July 1991, five months before the fall of the Soviet Union. Entry into force was subsequently delayed due to the Soviet Union's collapse and awaiting an Annex that enforced the terms of the Treaty upon the newly independent states of Russia, Belarus, Kazakhstan, and Ukraine. The latter three agreed to transport their nuclear arms to Russia for disposal. The Treaty is due to expire on 5 December 2009.<sup>10</sup>

The 1990s and the early 21<sup>st</sup> Century saw the development of several other conventions and initiatives. After twelve years of negotiations, the Chemical Weapons Convention (CWC) was adopted by the Conference on Disarmament in Geneva on 3 September 1992.<sup>11</sup> The CWC allows for the stringent verification of compliance by State Parties. The CWC opened for signature in Paris on 13 January 1993 and entered into force on 29 April 1997. The Comprehensive Nuclear-Test-Ban Treaty (CTBT) was signed in 1996, but is yet to enter into force.<sup>12</sup> The Organisation for the Prohibition of Chemical Weapons (OPCW) is the implementing body of the CWC and was established in 1997. Currently 187 States are Party to the CWC.

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<sup>8</sup> *Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Strategic Offensive Arms, Together With Agreed Statements and Common Understandings Regarding the Treaty*. Available at: <http://www.fas.org/nuke/control/salt2/text/salt2-2.htm> [Accessed May 2009].

<sup>9</sup> See <http://www.mctr.info/english/index.html> [Accessed May 2009].

<sup>10</sup> See *Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms*. Available at: <http://www.state.gov/www/global/arms/start.htm/start/start1.html> [Accessed May 2009].

<sup>11</sup> *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*. Currently 50 Parties are signatories to the Convention. Available at: <http://www.opcw.org/chemical-weapons-convention/> [Accessed May 2009].

<sup>12</sup> *Comprehensive Nuclear-Test-Ban Treaty*. Currently 179 Parties are signatories to the Treaty. Available at: [http://www.ctbto.org/fileadmin/content/treaty/treaty\\_text.pdf](http://www.ctbto.org/fileadmin/content/treaty/treaty_text.pdf) [Accessed May 2009].

In addition to these initiatives, there are a number of bilateral and multilateral treaties and arrangements that seek to reduce or eliminate certain categories of nuclear weapons, to prevent the proliferation of such weapons and their delivery vehicles. Such initiatives include the Nuclear Suppliers Group (NSG)<sup>13</sup>, the Hague Code of Conduct against Ballistic Missile Proliferation<sup>14</sup>, the Wassenaar Arrangement<sup>15</sup> and the Proliferation Security Initiative (PSI).<sup>16</sup>

The EU has participated in the above developments in numerous ways. Among the EU's earliest measures were actions in favour of the inclusion of a legally binding protocol to reinforce the BTWC and the EU *acquis* with respect to the NPT. In the early 1980s, EU Member States began to address jointly the problems of nuclear proliferation through an informal working group within the framework of European Political Cooperation (EPC). With the Single European Act (SEA) came another working group on chemical and biological weapons. Since the Maastricht Treaty, and the subsequent amending Treaties, their activity has been carried out within the Committee on Non-Proliferation (CONOP), which addresses the questions of WMD and missile proliferation from the perspective of the Common Foreign and Security Policy (CFSP) (Álvarez-Verdugo 2006: 1; Denza 2005; Höhl et al. 2003; Portela 2003).

<sup>13</sup> The Nuclear Suppliers Group is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of guidelines for nuclear exports and nuclear related products. Created in 1974, the NSG currently consists of 45 countries and the European Commission, which acts as an observer.

<sup>14</sup> *Hague Code of Conduct Against Ballistic Missile Proliferation*. The Hague Code of Conduct against Ballistic Missile Proliferation (HCOC) is the only multilateral code in the area of disarmament which has been adopted in the last years. It is the only normative instrument to verify the spread of ballistic missiles. It was signed in The Hague (Netherlands) in November 2002. Since then, the number of signatories has increased from 96 to 130. Available at: <http://www.un.org/News/Press/docs/2004/gadis3286.doc.htm> [Accessed May 2009].

<sup>15</sup> The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Formed in 1995, currently 41 States are Party to the Arrangement. Available at: <http://www.wassenaar.org/publicdocuments/2009/Basic%20Documents%20-%20Jan%202009.pdf> [Accessed May 2009].

<sup>16</sup> The Proliferation Security Initiative (PSI) was launched by the US administration on 31 May 2003 and constitutes a global effort aimed at stopping the trafficking of WMDs, their delivery systems, and related materials to and from States and non-state actors of proliferation concern. It relies on voluntary actions by States that are consistent with national legal authorities – national and international – to put an end to WMD-related trafficking and take steps to strengthen those authorities as necessary. The EU and its Member States fully endorsed and subscribed to the Statement of Interdiction Principles (the basis of the PSI) of 4 September 2003. See also: <http://www.consilium.europa.eu/uedocs/cmsUpload/st10052.en04.pdf> and <http://fas.org/sgp/crs/nuke/RS21881.pdf> [Accessed May 2009]. The recent joining of South Korea in May 2009 sparked regional tensions with North Korea. See also: <http://www.state.gov/t/isn/c10390.htm> [Accessed May 2009]. The PSI is an initiative in line with UN Security Council Resolution 1540, which decided that all States shall refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical and biological weapons and their means of delivery, and requires all States to adopt and enforce appropriate effective laws to this effect. The resolution also requires states to establish various types of domestic controls to prevent the proliferation of such weapons. See also: <http://www.un.org/disarmament/WMD/1540/index.shtml> [Accessed May 2009].



However, the Union's non-proliferation efforts were never part of a coordinated strategy and have had a limited, partial and irregular character. It was not until recently that the EU has moved to enhance its role as a non-proliferation actor.

### *Division of Competences in the Field of WMDs*

The capacity for the EU to address the issue of WMDs is uneven, as the Union generally lacks specific powers regarding both the production and/or trade in such weapons, ammunition and combat materials. The Treaty establishing the European Atomic Energy Community, however, makes all nuclear activities in Member States subject to inspection. By doing so, it indirectly includes nuclear non-proliferation issues. Furthermore, the Community's competence on free movement of goods and the Common Trade Policy have justified the adoption of regulations for export controls over goods with dual use (Álvarez-Verdugo 2006: 1).

WMD policy fits, for the most part, the policy within the framework of the CFSP and is therefore subject to the provisions in Title V TEU. The substantive scope of the Union's competence pursuant to Title V is explained in more detail in Articles 17(1) and (2) TEU. It provides that 'the common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the council so decide'. It also states that the 'progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments'. It further adds: '[q]uestions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking'.<sup>17</sup>

In order to attain these objectives, the TEU provides a number of instruments including 'common strategies, in areas where the Member States have important interests in common' (Article 13 TEU); 'joint actions' which 'address specific situations where operational action by the Union is deemed to be required' (Article 14 TEU); 'common positions' which 'define the approach of the Union to a particular matter of geographical or thematic nature (Article 15 TEU); information and consultation 'on any matter of foreign and security policy of general interest (Article 16 TEU); and the conclusion of international agreements (Article 24 TEU). The Member States are bound by joint actions (Article 14(3) TEU) and common positions (Article 15 TEU). The EU's military instruments

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<sup>17</sup> These tasks are also known as the "Petersberg Tasks". See: Ministerial Council of the Western European Union (WEU), 1992. *Petersberg Declaration*. Paragraph II.4., adopted by the on 19 June 1992.

are limited, even if some joint actions start entering the military terrain.<sup>18</sup> The use of economic and financial instruments for foreign policy purposes (e.g. to target financial assets of suspected terrorist networks), is largely a first pillar EC matter, as the EC Treaty provides for a common commercial policy, a development cooperation policy, other cooperation policies, and a common monetary policy for the Eurozone. In terms of legal instruments, the CFSP provisions do not appear to envisage legislative action (Eeckhout 2004: 142).

The CFSP is not an exclusive EU competence. Article 11(1) TEU provides that the Union shall define and implement a CFSP covering all areas of foreign and security policy. Article 11(2) TEU instructs the Member States to support the policy actively and unreservedly in a spirit of loyalty and mutual solidarity, and to refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Member States are bound by joint actions (Article 14(3) TEU) and common positions (Article 15 TEU). Further, they shall inform and consult one another within the Council on any matter of foreign and security policy of general interest (Article 16 TEU). In international organisations and at international conferences, Member States which are members of the UN Security Council will concert and keep the other Member States fully informed, and Member States which are permanent members will, in the execution of their functions, ensure the defence of the provisions and the interests of the Union, without prejudice to their responsibilities under the provisions of the UN Charter (Article 19 TEU). Unlike the practice in the EC Treaty, no institution or Member State can be brought before the ECJ for non-compliance. Article 11(2) TEU provides that the Council shall ensure that the principles in that provision are complied with.

The Union's powers to conduct policy on WMDs are, however, not solely confined to Title V TEU, as relations exist with regard to the EC Treaty, in particular Title IX TEC on the Common Commercial Policy, and with the Treaty establishing the European Atomic Energy Community (EAEC Treaty) that impact on the division of competences. Trade measures taken on the basis of Article 133 TEC relating to the implementation of the Common Commercial Policy include such measures aimed at the regulation of the export of dual-use items and technology (see *infra*). These measures do not only touch upon trade policy, but are also taken for the purpose of pursuing foreign policy. From a legal perspective, trade policy dominates here. It predates the CFSP, and comes within the exclusive competence of the EC. Another example is the exercise of political and economic pressure on a State

<sup>18</sup> See: European Union, 2003. *Joint Action 2003/92 on the European Union military operation in the Former Yugoslav Republic of Macedonia*. OJ L 34/26, 11 February 2003; and, European Union, 2003. *Joint Action 2003/423 on the European Union military operation in the Democratic Republic of Congo (ARTEMIS)*. OJ L 143/50, 11 June 2003.

by means of trade sanctions (see *infra*). The competence to adopt such measures comes within the realm of the Community's exclusive powers. Other measures include the imposition of trade restrictions on third countries. The Council adopts such measures based on (current) Article 133 TEC, not, however, without combining this with "political" decisions taken, at first, under the heading of CFSP (previously under EPC). The TEU has codified this practice by inserting the current Articles 60 and 301 TEC (Eeckhout 2004: 36-37).

With regard to relations with the EAEC Treaty, it is in principle the broad field of competence of the EC Treaty that also embraces the atomic-energy sector. The EC Treaty also governs the interrelationship between the EC Treaty and the EAEC Treaty. Article 305 TEC provides that the provisions of the EC Treaty "shall not derogate" from those of the EAEC Treaty. As far as the atomic energy sector is concerned, this means that the EC Treaty therefore does not apply whenever the EAEC Treaty contains a derogating provision. Where the EAEC Treaty does not lay down rules on a particular matter coming under the atomic energy sector, the matter in question falls within the EC Treaty (Lenaerts et al. 2005: 706-7).

In contrast with the EC Treaty, the EAEC Treaty expressly provides for parallelism between the EAEC's internal and external powers (Article 101 EAEC). On the basis of this Article, the Community is empowered, within the limits of its powers and jurisdiction, to conclude international agreements with third States, international organisations or a national of a third State. The Treaty also mentions mixed agreements in Article 102 EAEC. The Article states that such agreements will not enter into force until the Commission has been notified by all the Member States concerned that those agreements or contracts have become applicable in accordance with the provisions of their respective national laws. On the basis of Article 103 EAEC the Member States are required to communicate all draft agreements or contracts relating to matters within the purview of the Treaty. The Commission then has the power to object. ECJ Ruling 1/78 constitutes an EAEC case on the conclusion of the Convention on the Physical Protection of Nuclear Materials, Facilities and Transports<sup>19</sup>, whereby the Court concluded that the Community could not be excluded from participation in the Convention. The Convention was therefore to become a mixed agreement. The Court then drew attention to Article 192 EAEC, which is identical to Article 10 TEC, formulating the principle of loyal cooperation. The Court stated that unilateral action by the Member States, even if it were collective and concerted, would have the effect of calling into question certain of the essential functions of the Community and of detrimentally affecting its independent action in

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<sup>19</sup> See: ECJ, 1978. *Ruling 1/78 re Convention on the Physical Protection of Nuclear Materials, Facilities and Transports*. ECR 2151, para 31.

external relations. The Convention could therefore only be concluded by means of close cooperation between the institutions of the Community (Eeckhout 2004: 210).

### *Decision-Making methods*

Decisions taken under Title V TEU are generally taken by the Council acting unanimously.<sup>20</sup> Abstentions by members present in person or represented shall not prevent the adoption of such decisions. In the case of abstention (qualified by making a formal declaration under Article 23(1) TEU), the member of the Council in question is not obliged to apply the decision, yet accepts that the decision commits the Union (this is also known as the constructive abstention provision). However, if the members of the Council qualifying their abstention in the way described above represent more than one third of the votes weighed in accordance with Article 205(2) TEC, the decision shall not be adopted.<sup>21</sup>

The Council acts by qualified majority, as a derogation from Article 23(1) TEU, when adopting joint actions, common positions or taking any other decision on the basis of a common strategy; when adopting any decision implementing a joint action or a common position; and when appointing a special representative in accordance with Article 18(5) TEU.<sup>22</sup> If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by qualified majority, request that the matter be referred to the European Council for decision by unanimity.<sup>23</sup> The votes of the members of the Council are weighted in accordance with Article 205(2) TEC. For adoption, decisions require at least 232 votes in favour cast by at least two thirds of the members. In case of qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If this condition is not met, the decision in question is not adopted.<sup>24</sup> For procedural questions, the Council acts by a majority of its members.<sup>25</sup>

When it is necessary to conclude an agreement with one or more States or international organisations in implementation of Title V TEU<sup>26</sup>, the Council acts unanimously when the

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<sup>20</sup> TEU. Art. 23(1).

<sup>21</sup> TEU. Art. 23(1), second paragraph.

<sup>22</sup> TEU. Art. 23(2).

<sup>23</sup> TEU. Art. 23(2). Second paragraph.

<sup>24</sup> TEU. Art. 23(2). Third paragraph. This paragraph does not apply to decisions having military or defence implications.

<sup>25</sup> TEU. Art. 23(3).

<sup>26</sup> TEU. Art. 24(1).

agreement covers an issue for which unanimity is required for the adoption of internal decisions.<sup>27</sup> When the agreement is envisaged to implement a joint action or common position the Council shall act by a qualified majority in accordance with Article 23(2) TEU.<sup>28</sup> The provisions of Article 24 TEU also apply to matters falling under Title VI on Police and Judicial Cooperation in Criminal Matters. When the agreement covers an issue for which qualified majority is required for the adoption of internal decisions or measures, the Council acts by qualified majority in accordance with Article 34(3) TEU.<sup>29</sup> No agreement is binding on a Member State whose representative in the Council states that it has to comply with its own constitutional procedure; the other members of the Council may agree that the agreement applies provisionally.<sup>30</sup>

Measures taken on the basis of Article 133 TEC take place with the Council acting by qualified majority.<sup>31</sup> The imposition of trade restrictions on third countries pursuant to Article 60 and 301 TEC and, where provided, in a common position or in a joint action adopted according to the provisions of Title V TEU, take place according to the procedure in Article 301 TEC, which provides for the Council acting by qualified majority on a proposal from the Commission to this end.<sup>32</sup>

Agreements or contracts concluded on the basis of Article 101 EAEC are negotiated by the Commission in accordance with the directives of the Council, and they are concluded with the approval of the Council, which acts by a qualified majority.<sup>33</sup>

As decisions taken under the CFSP have links with the first pillar, trade policy shares direct links with non-proliferation measures taken under a CFSP heading for example, the level of cross-pillarisation occurring is likely to be high.

### *The Impact of the Treaty of Lisbon*

EU external action is currently exercised by a number of different actors. The Lisbon Treaty aims to amend this lack of coherence by reorganising the institutional framework in various ways. Firstly, the Presidency system is altered with the inauguration of a permanent President within the European Council. He or she will be elected by qualified majority voting for a period of two and a

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<sup>27</sup> TEU. Art. 24(2).

<sup>28</sup> TEU. Art. 24(3).

<sup>29</sup> TEU. Art. 24(4).

<sup>30</sup> TEU. Art. 24(5).

<sup>31</sup> TEC. Art. 133(4).

<sup>32</sup> TEC. Art. 301.

<sup>33</sup> EAEC. Art. 101.

half years, with the possibility of renewal once.<sup>34</sup> This aims to give better visibility and stability in the “preparation and the continuity of the work of the European Council” and “the external representation of the Union on the CFSP issues”.<sup>35</sup>

A second change lies in the creation of a “High Representative (HR) of the Union for Foreign Affairs and Security Policy”. The purpose of creating this position is with the formal abolition of the pillar structure to achieve greater coherence across Community and CFSP policies within the EU. It essentially creates a post that is active in both the Council and in the Commission, by combining the roles of the present High Representative for CFSP in the Council and the Commissioner for External Relations in the Commission (Dagand 2008: 5; Duke 2008: 13; Falletti 2007: 34).

The HR will be responsible for harmonising and coordinating the EU’s external action between the Commission and the Council.<sup>36</sup> The new HR will conduct security and foreign policy on behalf of the Council<sup>37</sup> and will additionally preside over the External Relations Council.<sup>38</sup> Moreover, the HR will have a representative role in the “conduct of political dialogue with third parties, and he/she shall express the Union’s position in International Organisations and at intergovernmental conferences”.<sup>39</sup>

A third change is the creation of the new European External Action Service (EEAS) that will support the HR.<sup>40</sup> It is composed of officials of the Council, Commission and diplomatic services of the Member States. The EEAS aims to streamline the EU external services by combining all those involved in foreign affairs (Dagand 2008: 6; Duke 2008: 15; Falletti 2007: 34).

The provisions covering the CFSP do not give new powers to the Commission to initiate decisions nor do they increase the role of the EP.<sup>41</sup> In spite of this declaration, the EP does acquire a degree of democratic control over the new HR in his/her role as Commissioner as the Parliament’s consent is required for his/her appointment. The Parliament also keeps its right to apply a censure motion to

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<sup>34</sup> TREATY OF LISBON, 2007. Art. 9B(5), OJ C 306/17, 17 December 2007.

<sup>35</sup> TREATY OF LISBON, 2007. Art. 9B(6), OJ C 306/18, 17 December 2007.

<sup>36</sup> TREATY OF LISBON, 2007. Art. 9E(4), OJ C 306/21, 17 December 2007.

<sup>37</sup> TREATY OF LISBON, 2007. Art. 9E(2), OJ C 306/21, 17 December 2007.

<sup>38</sup> TREATY OF LISBON, 2007. Art. 9E(3), OJ C 306/21, 17 December 2007.

<sup>39</sup> TREATY OF LISBON, 2007. Art. 13a(2), OJ C 306/27, 17 December 2007.

<sup>40</sup> TREATY OF LISBON, 2007. Art. 13a(3), OJ C 306/27, 17 December 2007.

<sup>41</sup> TREATY OF LISBON, 2007. Declaration 14, OJ C 306/255, 17 December 2007.

the whole Commission (Quille 2008).<sup>42</sup> The views of the Parliament must be “duly taken into consideration” and it is to be informed of “the main aspects and the basic choices” of CFSP.<sup>43</sup>

In terms of decision-making arrangements, not much seems to change with the Lisbon Treaty, although some new provisions do “facilitate” the process in a Union of 27 Member States. The Union is given explicit legal personality in Article 46A TREATY OF LISBON<sup>44</sup>, which enables it to sign treaties or international agreements towards which it has actively participated in the elaboration and negotiation. The use of its legal personality will, however, be restricted to those competences that have been conferred onto the Union by the Member States, and the CFSP will still be governed by specific decision-making procedures (Dagand 2008: 6; Gros-Verheyde 2007: 5).

The Lisbon Treaty furthermore facilitates decision-making procedures in a number of other ways. The Treaty introduces an additional exception to the unanimity rule in CFSP, as Member States will be entitled to adopt a decision on proposals presented by the HR – acting on his/her own or with the support of the Commission – on the basis of a qualified majority.<sup>45</sup> The Treaty also includes a provision that will enable Member States to extend the use of qualified majority further in relation to the CFSP, but this will be allowed only on the basis of unanimity among Member States at the European Council.<sup>46</sup>

The use of qualified majority voting should overcome the national vetoes within CFSP. However, if a Member State is opposed to a vote by qualified majority for what is defined as “vital reasons” and is reluctant to apply the constructive abstention provision, it may refer the question to the European Council, which would then take the decision on the basis of unanimity. This provision thus reasserts the dominance of Member States in the CFSP.<sup>47</sup> The CFSP therefore remains highly intergovernmental. However, the provisions inserted do seem to reflect a willingness on the part of the Member States to create more, although admittedly limited, possibilities for the EU to act more coherently and to produce a decision-making process that works in an EU of 27 Member States (Dagand 2008: 7).

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<sup>42</sup> TREATY OF LISBON, 2007. Art. 9D(8), OJ C 306/21, 17 December 2007.

<sup>43</sup> TREATY OF LISBON, 2007. Art. 21a, OJ C 306/31, 17 December 2007.

<sup>44</sup> TREATY OF LISBON, 2007, Art. 46a, OJ C 306/38, 17 December 2007.

<sup>45</sup> TREATY OF LISBON, 2007. Art. 15b(2)(i), OJ C 306/29, 17 December 2007.

<sup>46</sup> TREATY OF LISBON, 2007. Art. 15b(2)(i), OJ C 306/29, 17 December 2007.

<sup>47</sup> TREATY OF LISBON, 2007. Art. 15b(2), OJ C 306/28, 17 December 2007.



## EU WMD Policy Objectives, Output and Legal Instruments

### *Key Legislative Measures*

Measures taken by the Union in relation to non-proliferation include, inter alia, measures with respect to the peaceful use, regulation, and safe handling of nuclear materials and secure management of nuclear installations;<sup>48</sup> the export of dual-use items and technology;<sup>49</sup> individual

<sup>48</sup> Such measures include, *but are not limited to*, Commission Recommendation of 11 February 2009 on the implementation of a nuclear material accountancy and control system by operators of nuclear installations (notified under document number C(2009) 785), OJ L 41/17 of 12 February 2009; Commission Decision 2009/25/Euratom of 4 December 2006 on the conclusion of the Agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the Government of the Republic of Kazakhstan, OJ L 10/15 of 15 January 2009; Commission Decision 2008/99/EC, Euratom of 19 December 2007 concerning the accession of the European Atomic Energy Community to the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, OJ L 34/3 of 8 February 2008; Commission Decision 2007/530/Euratom of 17 July 2007 on establishing the European High Level Group on Nuclear Safety and Waste Management, OJ L 195/44 of 27 July 2007; Council Decision 2007/513/Euratom of 10 July 2007 approving the accession of the European Atomic Energy Community to the amended Convention on the Physical Protection of Nuclear Material and Nuclear Facilities - Declaration by the European Atomic Energy Community according to Articles 18(4) and 17(3) of the CPPNM, OJ L 190/12 of 21 July 2007; Council Regulation (Euratom) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation, OJ L 81 of 22 March 2007; Commission Decision of 28 August 2006 concerning the conclusion of an Agreement between the Government of Japan and the European Atomic Energy Community for co-operation in the peaceful uses of nuclear energy, OJ L 32/64 of 6 February 2007; Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, OJ L 337 of 5 December 2006; Commission Recommendation of 24 October 2006 on the management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste, OJ L 330/731 of 28 November 2006; Regulation (EC) no 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability, OJ L 327 of 24 November 2006; Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance, OJ L 210 of 31 July 2006; Commission Decision 2006/635/Euratom of 4 April 2006 on the conclusion, by way of signature, of an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the European Atomic Energy Community (Euratom) and the Cabinet of Ministers of Ukraine, OJ L 261/26 of 22 September 2006; Council Joint Action 2004/796/CFSP of 22 November 2004 for the support of the physical protection of a nuclear site in the Russian Federation, OJ L 349/57 of 25 November 2004; Commission Decision 2004/282/Euratom of 29 March 1999 concerning the conclusion of a cooperation Agreement between the European Atomic Energy Community and the Republic of Kazakhstan in the field of nuclear safety, OJ L 89/36 of 26 March 2004; Commission Decision 2004/277/EC, Euratom of 29 December 2003 laying down rules for the implementation of Council Decision 2001/792/EC, Euratom establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ L 87/20 of 25 March 2004; Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources, OJ L 346 of 31 December 2003; Council Decision 2003/744/Euratom of 22 September 2003 approving the conclusion by the Commission of an Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community (Euratom) and the Government of the Republic of Uzbekistan, OJ C 253 of 22 October 2003; Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ L 297/7 of 15 November 2001; Council Decision 98/623/CFSP of 3 November 1998 on the implementation of Joint Action 97/288/CFSP on the European Union's contribution to the promotion of transparency in nuclear-related export controls with a view to the financing of the second NSG seminar on nuclear-related export controls, OJ L 297 of 6 November 1998; Council Regulation (Euratom) No 1493/93 of 8 June 1993, on shipments of radioactive substances between Member States, OJ L 148 of 19 June 1993; Council Resolution of 18 June 1992 on the technological problems of nuclear safety, OJ C 172/2 of 8 July 1992.

<sup>49</sup> Such measures include, *but are not limited to*, Council Regulation (EC) No 1183/2007 of 18 September 2007 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, OJ L 278 of 22 October 2007; Council Regulation (EC) No 394/2006 of 27 February 2006 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, OJ L 74 of 13 March 2006; Index of items listed in Annex I to Council Regulation No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, OJ C 241 of 23 August 2000; Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, OJ L 159 of 30 June 2000; Index of goods listed in Annex I to Council Decision



countries;<sup>50</sup> international agreements and conventions;<sup>51</sup> and specific types of WMDs.<sup>52</sup> Also, various key measures were taken in the context of the EU participation in international

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1999/193/CFSP of 9 March 1999 amending Decision 94/942/CFSP on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods, OJ C 230 of 12 August 1999; Council Decision 95/127/CFSP of 10 April 1995 amending Decision 94/942/CFSP on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods, OJ L 90/2 of 21 April 1995.

<sup>50</sup> Such measures include, *but are not limited to*, Commission Regulation (EC) No 389/2009 of 12 May 2009 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea, OJ L 118/78 of 13 May 2009; Council Regulation (EC) No 1110/2008 of 10 November 2008 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ L 300 of 11 November 2008; Council Common Position 2008/652/CFSP of 7 August 2008 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran, OJ L 213/58 of 8 August 2008; Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ L 163/29 of 24 June 2008; Council Common Position 2008/479/CFSP of 23 June 2008 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran, OJ L 163/43 of 24 June 2008; Commission Regulation (EC) No 117/2008 of 28 January 2008 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea, OJ L 35/57 of 9 February 2008; Council Regulation (EC) No 618/2007 of 5 June 2007 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ L 143 of 6 June 2007; Council Common Position 2007/246/CFSP of 23 April 2007 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran, OJ L 106/67 of 24 April 2007; Council Decision 2007/242/EC of 23 April 2007 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ L 106/51 of 24 April 2007; Commission Regulation (EC) No 441/2007 of 20 April 2007 amending Council Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ L 104/28 of 21 April 2007; Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran, OJ L 103 of 20 April 2007; Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea, OJ L 88 of 29 March 2007; Council Common Position 2006/795/CFSP of 20 November 2006 concerning restrictive measures against the Democratic People's Republic of Korea, OJ L 322/32 of 22 November 2006; Council Decision 2003/874/CFSP of 8 December 2003 implementing Joint Action 2003/472/CFSP with a view to contributing to the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation, OJ L 326/49 of 13 December 2003; Council Joint Action 2003/472/CFSP of 24 June 2003 on the continuation of the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation, OJ L 157/69 of 26 June 2003; Council Decision 2001/493/CFSP of 25 June 2001 implementing Joint Action 1999/878/CFSP with a view to contributing to the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation; OJ L 180/2 of 3 July 2001; Council Joint Action 1999/878/CFSP of 17 December 1999 establishing a European Union cooperation programme for non-proliferation and disarmament in the Russian Federation, OJ L 331/11 of 23 December 1999.

<sup>51</sup> Such measures include, *but are not limited to*, Council Joint Action 2008/858/CFSP of 10 November 2008 in support of the Biological and Toxin Weapons Convention (BTWC), in the framework of the implementation of the EU Strategy Against the Proliferation of Weapons of Mass Destruction, OJ L 302/29 of 13 November 2008; Council Common Position 2007/469/CFSP of 28 June 2007 relating to the 2008 Review Conference of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), OJ L 176/39 of 6 July 2007; Council Common Position 2006/242/CFSP of 20 March 2006 relating to the 2006 Review Conference of the Biological and Toxin Weapons Convention (BTWC), OJ L 88 /65 of 25 March 2006; Council Joint Action 2006/184/CFSP of 27 February 2006 in support of the Biological and Toxin Weapons Convention, in the framework of the EU Strategy against the proliferation of Weapons of Mass Destruction, OJ L 65/51 of 7 March 2006; Commission Decision 2005/845/Euratom of 25 November 2005 concerning the accession of the European Atomic Energy Community to the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency, OJ L 314/27 of 30 November 2005; Commission Decision 2005/844/Euratom of 25 November 2005 concerning the accession of the European Atomic Energy Community to the Convention on Early Notification of a Nuclear Accident, OJ L 314/21 of 30 November 2005; Council Common Position 2005/329/PESC of 25 April 2005 relating to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, OJ L 106/32 of 27 April 2005; Commission Decision 2004/491/Euratom of 29 April 2004 amending Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) with regard to the Declaration attached thereto, OJ L 172/7 of 6 May 2004; Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery, OJ L 302/34 of 20 November 2003; Council Decision 2003/567/CFSP of 21 July 2003 implementing Common Position 1999/533/CFSP relating to the European Union's contribution to the promotion of the early entry into force of the Comprehensive Nuclear Test-Ban Treaty (CTBT), OJ L 192/53 of 31 July 2003; Council

organisations.<sup>53</sup> Other examples of measures include the setting up of organisations, such as the Joint Research Centre (JRC), for instance. The JRC was established by Article 8 of the European

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Common Position 2000/297/CFSP of 13 April 2000 relating to the 2000 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons, OJ L 97 of 19 April 2000; Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) (notified under document number C(1999) 3223), OJ L 318/20 of 11 December 1999; Common Position 1999/346/CFSP of 17 May 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union, relating to progress towards a legally binding Protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC), and with a view to the successful completion of substantive work in the Ad Hoc Group by the end of 1999, OJ L 133/3 of 28 May 1999; Common position 96/408/CFSP of 25 June 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, relating to preparation for the Fourth Review Conference of the Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (BTWC), OJ L 168/3 of 6 July 1996.

<sup>52</sup> Such measures include, *but are not limited to*, Council Decision 2008/974/CFSP of 18 December 2008 in support of the Hague Code of Conduct against Ballistic Missile Proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 345/91 of 23 December 2008; Council Joint Action 2007/178/CFSP of 19 March 2007 in support of chemical weapons destruction in the Russian Federation in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 81/30 of 22 March 2007; EU Action Plan of 27 February 2006 on biological and toxin weapons, complementary to the EU Joint Action in support of the BTWC, OJ C 57 of 9 March 2006;

<sup>53</sup> Such measures include, *but are not limited to*, Council Joint Action 2008/588/CFSP of 15 July 2008 on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) in order to strengthen its monitoring and verification capabilities and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 189/28 of 17 July 2008; Council Joint Action 2008/368/CFSP of 14 May 2008 in support of the implementation of United Nations Security Council Resolution 1540 (2004) and in the framework of the implementation of the EU strategy against the proliferation of weapons of mass destruction, OJ L 127/78 of 15 May 2008; Council Joint Action 2008/314/CFSP of 14 April 2008 on support for IAEA activities in the areas of nuclear security and verification and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 212/6 of 7 August 2008; Council Joint Action 2008/307/CFSP of 14 April 2008 in support of World Health Organisation activities in the area of laboratory bio-safety and biosecurity in the framework of the European Union Strategy against the proliferation of Weapons of Mass Destruction, OJ L 106/17 of 16 April 2008; Council Common Position 2007/762/CFSP of 22 November 2007 on participation by the European Union in the Korean Peninsula Energy Development Organisation (KEDO), OJ L 305/62 of 23 November 2007; Council Joint Action 2007/753/CFSP of 19 November 2007 on support for IAEA monitoring and verification activities in the Democratic People's Republic of Korea in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction, OJ L 304/38 of 22 November 2007; Council Joint Action 2007/468/CFSP of 28 June 2007 on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test Ban Treaty Organisation (CTBTO) in order to strengthen its monitoring and verification capabilities and in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 176/31 of 6 July 2007; Council Joint Action 2007/185/CFSP of 19 March 2007 on support for OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 85/10 of 27 March 2007; Council Joint Action 2006/419/CFSP of 12 June 2006 in support of the implementation of the United Nations Security Council Resolution 1540 (2004) and in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction, OJ L 165/30 of 17 June 2006; Council Joint Action 2006/418/CFSP of 12 June 2006 on support for IAEA activities in the areas of nuclear security and verification and in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction, OJ L 165/20 of 17 June 2006; Council Joint Action 2006/243/CFSP of 20 March 2006 on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) in the area of training and capacity building for verification and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 88/68 of 25 March 2006; Council Joint Action 2005/913/CFSP of 12 December 2005 on support for OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 331/34 of 17 December 2005; Council Joint Action 2005/574/CFSP of 18 July 2005 on support for IAEA activities in the areas of nuclear security and verification and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 193/44 of 23 July 2005; Council Joint Action 2004/797/CFSP of 22 November 2004 on support for OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 349/63 of 25 November 2004; Council Joint Action 2004/495/CFSP of 17 May 2004 on support for IAEA activities under its Nuclear Security Programme and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, OJ L 182/46 of 19 May 2004.

Atomic Energy Community Treaty (Euratom Treaty) and was entrusted with the development of methodologies and technologies for the implementation of safeguards, the training of both Commission and International Atomic Energy Agency (IAEA) inspectors and the implementation of the European support programme to the IAEA.

As mentioned earlier (see introduction *supra*), however, it was not until relatively recently that the EU has moved to enhance its role as a non-proliferation actor.

### ***Council and Commission Joint Programme on WMDs***

In the aftermath of the 11 September 2001 terrorist attacks the Council believed that terrorism, including Chemical, Biological, Radiological and Nuclear terrorism (CBRN-T) constitutes a threat to international peace and security. In its Declaration in the follow-up to the September 11 attacks, the European Council (2001a: point 4) called for the enhancement of joint efforts with regard to non-proliferation and export controls regarding both arms and chemical, bacteriological and nuclear substances capable of being used for terrorist purposes. The Laeken European Council (2001b: point 17) reiterated this call by inviting the Council and the Commission to move swiftly towards finalising the programme to improve cooperation between Member States with regard to the threat of the use of biological and chemical means. The Seville European Council (2002: point 7) called for the development of the Union's common evaluation of terrorist threats against Member States or forces deployed under the ESDP outside the Union in crisis management operations, including the threat posed by terrorist use of WMDs. Furthermore, pursuant to Common Position 2001/931/CFSP<sup>54</sup> and its amending acts, Member States are to offer each other the widest possible assistance in preventing and combating terrorist acts through police and judicial cooperation in criminal matters, within the framework of Title VI TEU.

In order to address these calls related to CBRN terrorism, a comprehensive strategy was needed that comprised not only political, economic, diplomatic, military and legal means, but which also included the preparation for, as well as the prevention and limitation of, the consequences of a potential CBRN attack. The Council and the Commission agreed on 20 December 2002 on a joint Programme to improve cooperation in the European Union for preventing and limiting the consequences of chemical, biological, radiological or nuclear terrorist threats (CBRN-Programme).

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<sup>54</sup> Council Common Position 2001/931/CFSP. 27 December 2001. *On the application of specific measures to combat terrorism*. OJ L 344/93, 28 December 2001.

This programme forms part of the general anti-terrorist programme of the Union (Council of the European Union 2002b).

The Programme sets out strategic objectives that are to be addressed in order to improve the protection of the population, the environment, the food chain and property against CBRN threats and attacks, and describes areas where there is a need for further action. Health, the food chain, the environment and vulnerable industries and transports are designated as sectors deserving special attention. The provisions of the program relate only to the Union's territory. Primary responsibility for the protection against CBRN threats is assumed to lie with the Member States. The Council and the Commission play a facilitating role. The Programme aims at increasing the efficiency of national and Community measures to combat CBRN threats by improving cooperation and coordination between Member States, the Council and the Commission; facilitating the provision of practical assistance to Member States upon their request, particularly when the scale of the disaster is beyond their individual capacity of response; and by creating new instruments if necessary (Council of the European Union 2002a).

The Programme sets out seven objectives: (i) the strengthening of risk analysis and assessment of CBRN threats and their lines of propagation; (ii) the development of preventive measures with a particular focus on vulnerable sectors; (iii) ensuring the quick detection and identification of CBRN attacks and providing all those concerned with appropriate information, (iv) the use and further development of all necessary instruments for mitigating and repairing the consequences of an attack (i.e. developing vaccines, sera and antibiotics for human and animal use and reinforcing existing stocks); (v) the strengthening of the scientific basis of the Programme (research and development activities); (vi) cooperation with third countries and international organisations; (vii) ensuring an efficient coordination and implementation of the Programme's instruments (Council of the European Union 2002a). The Programme constitutes a political and not a legal instrument. Regular reviews of this Programme are carried out (see *infra*).

### ***The European Security Strategy***

The European Security Strategy of December 2003 explicitly mentions WMDs as a security threat and, going even further, labels it as "potentially the greatest threat to our security" (Council of the European Union 2003e). It acknowledges the slowing down of the spread of WMDs and delivery systems through the international treaty regimes and export control arrangements (see *supra*). According to the Strategy, however, we are entering a new and dangerous phase that entails an

increased possibility of a WMD arms race, notably in the Middle East. Advances in the biological sciences are said to increase the potency of biological weapons. Chemical and radiological attacks are also seen as a serious possibility. Also, the spread of missile technology further enhances instability. The Strategy hints at a scenario whereby terrorist groups acquire WMDs and would be able to inflict damage on the scale of States and armies (Council of the European Union 2003e: 3-4). The Strategy states that proliferation may be contained through export controls and attacked through political, economic and other pressures while the underlying political causes should also be tackled (see *supra*).

### ***The EU Basic Principles and Action Plan on WMDs***

Drawing on a number of Member State proposals that were suggested in April 2003, the Council Secretariat and the Commission drew up a set of Basic Principles defining broad lines for an EU strategy against the proliferation of WMDs. This set comprises thirteen different principles that were to form the basis of such a strategy. The Basic Principles reiterated the threat posed by WMDs to international peace and security and the possible acquisition of such weaponry by terrorist groups. They called, *inter alia*, for a comprehensive approach incorporating diplomatic preventative measures as a first line of defence, combined with coercive measures under Chapter VII of the UN Charter and international law and working through the multilateral treaties. It called for the establishment of international verification instruments, the seeking of political solutions to deter countries from feeling the need to acquire WMDs, with particular attention given to the Mediterranean, given its link to security and stability in Europe, and a close partnership with the US and Russia in order to effectively implement a WMD non-proliferation regime (Council of the European Union 2003a).

In addition to these Basic Principles, an Action Plan for the Implementation of the Basic Principles was developed, which was intended to provide an initial work programme to allow for the practical implementation of the Basic Principles. This Action Plan called, *inter alia*, for several measures for immediate action and measures for the medium to long term. Immediate measures included the establishment of a detailed plan of diplomatic action, the adoption of a firm engagement for the promotion of the universalisation and reinforcement of multilateral agreements, the prolongation of the Programme on disarmament and non-proliferation in Russia<sup>55</sup>, the rapid ratification by all

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<sup>55</sup> See Council Decision 2003/874/CFSP, *supra* note 50.



Member States and acceding countries of the IAEA Additional Protocols<sup>56</sup>, providing the IAEA with adequate budgetary increases for implementing its safeguard tasks, the promotion of challenge inspections in the framework of the CWC, and asking the EU to become a leading cooperative player in export control regimes (Council of the European Union 2003b: points 1-7).

Medium to long-term measures included the mainstreaming of non-proliferation policies into the EU's wider relations with third countries, increasing the EU cooperative threat reduction funding in light of financial perspectives beyond 2006, a special focus on WMD proliferation in the Mediterranean region, the adoption by Member States of common policies related to criminal sanctions for illegal export or brokering of WMD-related material, the retaining of the verification and inspection expertise of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), supporting a stronger role for the UN Security Council in handling the threat of WMDs, the setting up of a monitoring centre on WMD disarmament and non-proliferation, improving the control of high activity radioactive sources, a policy not to export nuclear related materials and equipment to countries not having ratified the IAEA Additional Protocol, the reinforcement of the BTWC and the CWC, the strengthening of national legislation and control over pathogenic micro-organisms and toxins (both in Member States and in acceding countries), the initiation of a EU-US (biological) industry dialogue, the reinforcement of the efficiency of export controls in an enlarged Europe, the establishment of a "Peer Review" of Member States' and acceding countries' export control systems, and the setting up of assistance to States in need of technical knowledge in the field of export controls (Council of the European Union 2003b: 8-22).

The Thessaloniki European Council of December 2003 adopted a Declaration on the non-proliferation of WMDs. In this Declaration the European Council reiterated once again the threat posed by WMDs to international peace and security and it stressed that a number of States have sought or were seeking to develop such weapons (European Council 2003a: ANNEX II, point 1). The Declaration read that meeting the challenge of WMDs must be a central element in the EU's external action, including the CFSP. The objective is to deter, halt and, where possible, reverse proliferation programmes of concern worldwide. Drawing on the Basic Principles, the European Council requested that Member States put forward a coherent EU strategy to address the threat of proliferation (European Council 2003a: ANNEX II, points 2-3).

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<sup>56</sup> See IAEA Safeguards Agreements and Additional Protocols. Available at: [http://www.iaea.org/Publications/Factsheets/English/sg\\_overview.html](http://www.iaea.org/Publications/Factsheets/English/sg_overview.html) [Accessed May 2009].

### *The EU Strategy Against Proliferation of WMDs*

In order to fulfil the commitment of the Thessaloniki European Council, the Member States set out, drawing on the Basic Principles and Action Plan, to draft an EU strategy to address the threat of proliferation. The Council (2003d) released its Strategy Against Proliferation of Weapons of Mass Destruction (SAPWMD) on 10 December 2003, which was adopted by the Brussels European Council (2003b) some two days later.

The SAPWMD sees non-proliferation, disarmament and arms control making an essential contribution in the fight against terrorism by reducing the risk of non state actors gaining access to WMDs, radioactive materials and their means of delivery (Council of the European Union 2003d: point 3). The SAPWMD acknowledges the role that the NPT has played in slowing, and in some cases reversing, the spread of military nuclear capability. It also states, however, that the NPT has not been able to prevent it completely, with the possession of nuclear weapons by States outside the NPT and non-compliance with the Treaty's provisions by States party to the Treaty risk undermining non-proliferation and disarmament efforts (Council of the European Union 2003d: point 6). With regard to chemical weapons, it notes that the difficulty with the verification and export control regimes is that the materials, equipment and know-how are dual use. One way of assessing the risk level is to see whether there is indigenous ability (meaning if the necessary commodities and industrial capacity are present) to produce chemical warfare (CW) agent precursors and to weaponise CW agents. With respect to biological weapons, the effective deployment of such weaponry requires specialised scientific knowledge, including the acquisition of agents for effective dissemination. Nonetheless, the potential for misuse of dual-use technology is increasing as a result of rapid developments in the life sciences. Defence against biological weapons is very difficult (given their lack of signature) and containing the consequences is hard depending on the agent used and whether humans, animals, or plants are targeted. For these reasons, biological weapons may have a particular attraction for terrorists. Other causes of concern are the development by several countries of ballistic programmes, of autonomous capacity in the production of medium and long range missile, as well as cruise missiles and Unmanned Aerial Vehicles (UAVs) (Council of the European Union 2003d: points 7-9). The SAPWMD goes on to state that all the States of the Union and the EU institutions have a collective responsibility for preventing the risks associated with WMDs by actively contributing to the fight against proliferation (Council of the European Union 2003d: point 12).

The SAPWMD reiterates the Basic Principles by calling for a strategy of effective multilateralism in tackling the proliferation of WMDs. The multilateral treaty system is seen as the basis for the Strategy. The EU states that its policy is *among others* to pursue an international agreement on the prohibition of the production of fissile material for nuclear weapons or other nuclear explosive devices (Council of the European Union 2003d: point 16).<sup>57</sup> If the multilateral treaty regime is to remain credible, the SAPWMD calls for an emphasis on a policy of reinforcing compliance with the regime. Policy, in the eyes of the EU, must be geared towards enhancing the detectability of significant violations and the strengthening of enforcement of the prohibitions and norms established by the regime, including by providing for the criminalisation of violations committed under the jurisdiction or control of a State. The SAPWMD calls for the improvement of verification mechanisms and systems, the strengthening of export control policies and a stronger role for the UN Security Council as final arbiter on the consequence of non-compliance (Council of the European Union 2003d: points 17-9).

The SAPWMD makes an explicit link with WMD proliferation and regional instability, insecurity and situations of conflict. The Strategy calls for the fostering of regional security arrangements and regional arms control and disarmament processes. In addition, the importance of close cooperation with partners such as the US<sup>58</sup>, Russia, Japan<sup>59</sup> and Canada<sup>60</sup> is once again underlined as in the Basic Principles (Council of the European Union 2003a).

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<sup>57</sup> The Fissile Material Cut-off Treaty (also known as FISSBAN or FMCT) is a proposed international treaty to further prohibit the production of weapons-grade uranium and plutonium. It would not prohibit the production of fuel-grade uranium and plutonium, nor of other components in nuclear warheads. Negotiations on this treaty started in 1993, but have been stalled for many years. The SAPWMD mentions it once again. The approach seems not to have changed, nor the level of progress in this direction. Illustrative are the statements released by the EU in this regard. For example, in December 2008, during the French Presidency, the French President issued a letter to the Secretary General of the United Nations Conference on Disarmament in which it called for the immediate opening, without preconditions, of negotiations on a treaty banning the production of fissile material for nuclear weapons and observance of an immediate moratorium on the production of such material. Available at: [http://www.carnegieendowment.org/files/Sarkozy\\_UN\\_letter\\_20081208.pdf](http://www.carnegieendowment.org/files/Sarkozy_UN_letter_20081208.pdf) [Accessed May 2009]. On 6 May 2009 at the Preparatory Committee for the 2010 Non-Proliferation Treaty Review Conference Third session, 4 - 15 May 2009, the head of the non-proliferation and disarmament unit of the Czech Ministry of Foreign Affairs issued a similar statement on behalf of the European Union. Available at: [http://www.europa-eu-un.org/articles/en/article\\_8722\\_en.htm](http://www.europa-eu-un.org/articles/en/article_8722_en.htm) [Accessed May 2009]. Both these statements appeared first in the Council's Statement on tighter international security.

<sup>58</sup> On 20 June 2005, the EU and the US issued a Joint Declaration on Enhancing Cooperation in the Field of Non Proliferation and the Fight Against Terrorism. The Declaration follows the line of the SAPWMD, and also includes references to the nuclear programs of Iran and North Korea (Council of the European Union, 2005a). A Joint Programme of Work on the Non proliferation of Weapons of Mass Destruction was also issued (Council of the European Union, 2005b).

<sup>59</sup> On 22 June 2004 Japan and the EU issued a Joint Declaration on Disarmament and Non-proliferation. The document generally follows the line as set out by the SAPWMD (Council of the European Union, 2004).

<sup>60</sup> On 19 June 2005 Canada and the EU issued a Joint Summit Declaration which includes references to threats posed by proliferation, notably by Iran (Council of the European Union, 2005c).



Accompanying the broad principles of the SAPWMD is an action plan divided along four lines of action: (i) rendering multilateralism more effective by acting resolutely against proliferators, (ii) promoting a stable international and regional environment, (iii) cooperating closely with the United States and other key partners and (iv) developing the necessary structures within the Union (Council of the European Union 2003d: 9-13).

With regard to the first issue, the Council called for diplomatic action to promote the universalisation and reinforcement of multilateral agreements, in implementation of Council Common Position 2003/805/CFSP.<sup>61</sup> The Council goes on to state that the expertise of UNMOVIC should be retained and utilised, for example by setting up a roster of experts. In terms of its engagement to verification regimes, the EU called for the release of financial resources to support specific projects conducted by multilateral institutions (i.e. IAEA, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) and OPCW) and for the promotion of challenge inspections in the framework of the CWC. Furthermore, it noted that the BTWC had no verification mechanism and stressed the need to find ways to strengthen compliance, as well as voicing the consideration of giving support to States with administrative or financial difficulties in their national implementation of the BTWC and the CWC. In terms of export controls, the Strategy noted the promotion of a “catch-all clause” in the regimes where it is not already agreed in order to strengthen the verification of exports coupled with enhanced information exchange, in particular with respect to sensitive destinations, sensitive end-users and procurement patterns (Council of the European Union 2003d: points 30A 2-3). Other proposed measures included, *inter alia*, the setting up of a Peer Review scheme to disseminate best practices as well as a programme of assistance to States in need of technical knowledge in the field of export control; ensuring that the NSG makes the export of controlled nuclear and nuclear related items and technology conditional upon ratifying and implementing the Additional Protocol;<sup>62</sup> ensuring the fast implementation of Council Directive 2003/122/Euratom at the national level<sup>63</sup> and the promotion of similar provisions by third countries; the strengthening of EC and national legislation over pathogenic microorganisms and toxins in both Member States and acceding countries; the analysis of the creation of an EU Centre for Disease Control;<sup>64</sup> fostering a dialogue with EU industry and

<sup>61</sup> See *supra* note 51.

<sup>62</sup> See IAEA Safeguards Agreements and Additional Protocols. Available at: [http://www.iaea.org/Publications/Factsheets/English/sg\\_overview.html](http://www.iaea.org/Publications/Factsheets/English/sg_overview.html). [Accessed May 2009].

<sup>63</sup> TREATY OF LISBON, 2007. Art 15b(2), OJ C 306/28, 17 December 2007.

<sup>64</sup> The European Centre for Disease Prevention and Control (ECDC) was established in 2004. See: Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease

between the EU and US industry to raise awareness of problems related to WMD in general and specifically within the biological sector; the adoption of common policies related to criminal sanctions for illegal exportation, brokering and smuggling of WMD-related materials; and the consideration of measures aimed at controlling the transit and transshipment of sensitive materials as well as the identification, control and interception of illegal shipments (Council of the European Union 2003d: points 30A 4-6).

With regard to the second issue, the Strategy called for the prolongation beyond 2004 of the Programme on disarmament and non-proliferation in Russia<sup>65</sup>, the creation of a specific Community budget line for non-proliferation and disarmament of WMDs, and the setting up of a programme of assistance to States in need of technical knowledge in order to ensure the security and control of sensitive material, facilities and expertise (Council of the European Union 2003d: point 30B 1). Furthermore, the Strategy called for the mainstreaming of non-proliferation policies into the EU's wider relations with third countries in accordance with the General Affairs and External Relations Council (GAERC) conclusions of 17 November 2003, by inserting "non-proliferation clauses" into agreements with third countries.<sup>66</sup>

Measures proposed with respect to the third and fourth issue included, *inter alia*, ensuring an adequate follow-up to the EU-US declaration on non-proliferation issued at the June 2003 summit and ensuring coordination and, where appropriate, joint initiatives with key partners; organising a six monthly debate on the implementation of the EU Strategy at the External Relations Council; and the setting up of a WMD Monitoring Centre (WMD-MC)<sup>67</sup> to see to the consistent implementation of the EU Strategy and the collection of information and intelligence, in liaison with SitCen (Council of the European Union 2003d: points 30C 1-2, 30D 1-2).

### ***New Lines for Action in EU Policy on WMD***

On 2 December 2008 the Political and Security Committee (PSC) discussed and approved a Statement on tighter international security, which was adopted by the Council on 8 December 2008.

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prevention and control, OJ L 142 of 30 April 2004. It is an EU Agency with the aim of identifying, assessing and communicating current and emerging threats to human health posed by infectious diseases.

<sup>65</sup> See *supra* note 50.

<sup>66</sup> The GAERC conclusions of 17 November 2003 detail the inclusion of a "non-proliferation clause" into agreements that are concluded with third countries (Council of the European Union 2003c).

<sup>67</sup> The establishment of this WMD-MC was requested by the Thessaloniki European Council. In December 2006, the Council endorsed a concept paper on how to monitor and further enhance the implementation of the SAPWMD through such a Centre. The activities of the WMD-MC would entail the day-to-day implementation of the SAPWMD, its further development, ensuring the coherence of assistance programmes (Joint Actions and Community programmes) and participation in contacts with third countries and organisations (Council of the European Union 2006: pp.4-5).

In this Statement, the Council stressed that a negotiated solution to the Iranian nuclear issue is of cardinal importance for the EU. It reads that if Iran were to acquire a military nuclear capability it would constitute an unacceptable threat to our security, both regional and international, and that additional measures to increase pressure on Iran would have to be considered should it fail to comply with the urgent requests of the UN Security Council (Council of the European Union 2008a: point 7). Furthermore, the Council stressed that the development of nuclear energy for civilian purposes should occur in conditions of maximum safety, security and non-proliferation. In doing so, it also hinted at the idea that international efforts to set up multilateral mechanisms by helping to boost energy security can also offer a credible alternative to the development of national capabilities for sensitive fuel cycle technologies. Specific measures to this end have been taken with the announcement that the Union is willing to contribute financially to the creation of a nuclear fuel bank under the auspices of the IAEA (Council of the European Union 2008a: point 9).<sup>68</sup>

The Statement goes on to call for the universal ratification of the CTBT and the dismantling, as soon as possible, of all nuclear testing facilities in a manner that is transparent and open to the international community, as well as issuing the statement on the opening of negotiations on a Fissile Material Cut-off Treaty. Support for the universal ratification of the CTBT was recently also stated by US President Obama (Council of the European Union 2008a: point 10).<sup>69</sup> The Council (2008c: point 10) furthermore called for, *inter alia*, progress to be made in the current discussions between the US and Russia on the development of a legally binding post-START arrangement, and an overall reduction in the global stockpile of nuclear weapons in accordance with Article VI of the NPT, in particular by the States which possess the largest arsenals; inclusion of tactical nuclear weapons, by those States which have them, in their general arms control and disarmament processes, with a view to their reduction and elimination; the start of consultations on a treaty banning short- and medium-range surface-to-surface missiles; accession to and implementation by all of the Hague Code of Conduct; and mobilisation in all other areas of disarmament. With respect to biological and chemical weapons, the Council called for universal accession to and full implementation of the CWC and the BTWC, and reaffirmed the EU Joint Actions adopted in support

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<sup>68</sup> Furthermore, the Commissioner for External Relations stated on 26 March 2009, upon the adoption of a 2009 Communication on nuclear non-proliferation (see *infra*), that “the Commission stands ready to support the establishment of a nuclear fuel bank under the auspices of the IAEA both through financial and technical assistance.” Available at: [http://www.eu-un.europa.eu/articles/en/article\\_8602\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_8602_en.htm) [Accessed May 2009].

<sup>69</sup> In relation to this, American President Barack Obama stated in Prague on 5 April 2009 that in order “[t]o achieve a global ban on nuclear testing, my Administration will immediately and aggressively pursue U.S. ratification of the Comprehensive Test Ban Treaty. After more than five decades of talks, it is time for the testing of nuclear weapons to finally be banned”.

of the OPCW, for the destruction of chemical weapons in Russia, in support of the BTWC and of the World Health Organisation.

Some two weeks later, the Council issued Conclusions and new lines for action by the EU in combating the proliferation of WMDs and their delivery systems. The document states that the risk of WMDs is currently even higher than when the SAPWMD was adopted in 2003. The Council goes on to refer to the acceleration of trade and globalisation as facilitators of the dissemination of technologies that can contribute to WMD programmes. Such developments are said to not only be the result of a willingness on the part of certain States, but also of initiatives taken by private and illegal networks, which may add to the emerging risk that such weapons may be developed and used by terrorists (Council of the European Union 2008c: 3). The Conclusions identify four different objectives: (i) to raise the profile of non-proliferation measures, (ii) to identify existing best practices with a view to encouraging the spread of such practices, (iii) to encourage better coordination and optimal mobilisation, and (iv) to identify areas where EU action must be stepped up (Council of the European Union 2008c: 4-5).

The plan stated that in order to better target and calibrate EU action, the SitCen should draw up a specific document for evaluating trends, risks and threats with regard to proliferation, including the threat of terrorist access to WMDs, which is updated annually. The document should comprise an up-to-date analysis of risks and threats and be supplemented by scientific studies on, for example, proliferation networks and procurement requirements for specific proliferation programmes; the profile and modus operandi for the illegal transportation of proliferation material by operators by air, sea, land and railways; financing methods and networks, etc. Furthermore, EU action to counter proliferation could benefit from the support provided by a non-governmental, non-proliferation network bringing together foreign policy institutions and research centres specialising in the EU's strategic areas while building on useful networks which already exist. The extension of such a network to third countries with which the EU is conducting specific dialogues in connection with non-proliferation is envisaged. The document suggested that this group be chaired by the Secretary General/High Representative's (SG/HR) personal representative for non-proliferation in accordance with the guidelines defined in the framework of the WMD-MC. Meetings with all independent think tanks of the network could be held in Brussels, or elsewhere in the EU, every two years and submit recommendations to the SG/HR's personal representative for non-proliferation, the document reads (Council of the European Union 2008c: 9-11).

According to the Council, supervising access by foreign nationals to research establishments, bodies or institutions engaged in scientific activities of a sensitive nature is an essential instrument in fighting proliferation. The Council suggested that on the basis of a risk and threat evaluation document, it could adopt a common position, paying particular attention to a list of areas of scientific cooperation. The competent working parties would then be invited to exchange best practices in that regard and to examine actions that could be taken together to increase efficiency in the field of non-proliferation (Council of the European Union 2008c: 11).

The Council suggested that Member States could establish a consular vigilance procedure, or to strengthen such a procedure where it already exists, with a view to ensuring the efficient management of access by foreign nationals to their territory taking into account the conclusions of the aforementioned risk and threat evaluation document. European cooperation on consular vigilance could provide for specific European coordination measures including: mutual notification of visa refusals justified by a risk of proliferation in consular posts in sensitive countries, consideration of modalities that would allow inclusion in the appropriate categories of alert in the SIS of persons involved in proliferation activities, coordination on the creation of a legal mechanism providing for consultation of the SIS in the case of long-stay visas (Council of the European Union 2008c: 12).

Furthermore, the Council (2008c: 13) emphasised the need to step up efforts in raising awareness in scientific and academic circles on non-proliferation issues, for example through enhanced exchanges between universities, laboratories and Member States' relevant authorities. In this regard, the document also states that existing codes of professional conduct for scientists could be supplemented with the aim to raise awareness that legitimate work can have dual-use applications (Council of the European Union 2008c: 13).

In light of improving national export and control procedures, and in particular national implementation procedures, the Council proposed, *inter alia*, regular in-depth training of control authorities on the technical characteristics of the goods controlled; improvement of enforcement measures such as, for example, the computerisation of procedures, enhanced coordination between agencies and support for the launch of a secure system permitting online sharing of information on denials of exports, brokering and transit; having SitCen's analysis to the Council bodies also forwarded to national authorities in charge of export controls. With regard to the improvement of national export control procedures, suggestions were made to produce good practice guides concerning control procedures for exports of dual-use items, contributing to identifying

components of training courses within a framework to be defined taking into account other EU priorities, and undertaking technical examinations of proposals of adjustments to export control lists (Council of the European Union 2008c: 14).

Member States were encouraged to make greater efforts to raise awareness amongst undertakings, including at the level of economic operators whose activities may be sensitive from the viewpoint of proliferation of WMDs and their delivery systems, with particular efforts with regard to professional federations, in particular by encouraging regular formal and informal contacts between those operators and the administrations concerned. At the European level the Council (2008c: 15) suggested raising awareness through the organisation of seminars, the production of standard information documents explaining the legislative framework and through the exchange of experiences concerning the mechanisms introduced.

In terms of the financing of proliferation, Member States were encouraged to continue their efforts within the FATF and to consider the international rules and practices that could be adopted to better combat the financing of proliferation. Additionally, Member States were asked, *inter alia*, to make special efforts to raise the awareness of financial institutions in order to not only prevent proliferation activities from being financed, but also to protect our banks from proliferators' malicious intentions; and to improve cooperation between administrative authorities and financial supervisory authorities and encourage the transmission, where necessary, of relevant information for exercising financial vigilance (Council of the European Union 2008c: 16). Furthermore, the implementation of financial sanctions was said to be in need of improvement. In this respect, Member States were asked to provide feedback on experience in implementing financial sanctions since resolutions on Iran and North Korea were adopted and to review the best practices for sanctions and update them as appropriate (Council of the European Union 2008c: 17).

With regard to improving efforts to combat trafficking in CBRN substances and strengthening systems for the interception of proliferation flows, Member States were encouraged to carry out random checks using risk criteria and increased exchanges of information concerning entities suspected of trafficking. Other suggestions to Member States included, *inter alia*, to examine the conditions under which the exchange of information concerning entities suspected of trafficking could be increased effectively, to continue the joint customs operations organised within the framework of the Customs Cooperation Working Party (CCWP) and to launch a discussion on how to better coordinate the means available for interdiction operations (Council of the European Union 2008c: 18).

The Council also suggested the adoption of conclusions encouraging Member States to ratify the Protocol to the 2005 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as soon as possible. Once this is done the Council should elaborate a mechanism supplementing the Protocol, whereby EU Member States could, as far as is compatible with national legislation, give prior mutual consent to the boarding on the high seas of suspicious vessels flying their flag (Council of the European Union 2008c: 18).

A further call is made to Member States to strengthen the legal means to combat acts of proliferation through surveying the current practices, legislation and regulation relating to the prevention and punishment of acts of proliferation in order to identify any shortcomings. Also, the Council is requested to reach agreement that criminal sanctions are appropriate penalties for illegal exports, brokerage and smuggling of WMDs. Further, the Council emphasised that a more systematic definition of geographical areas and priority areas for technical cooperation is needed. In this light, the General Secretariat of the Council (GSC) is asked to draw up a biannual document defining the geographical priorities for EU cooperation with third countries. This document should define the criteria selected for defining the EU's geographical priorities (Council of the European Union 2008c: 19-20).

Apart from action to continue to support the treaty regime, other specific measures should also be given priority. These include, *inter alia*, the establishment of regional centres giving training in CBRN security and safety culture, support for IAEA measures to safeguard nuclear and radioactive materials and nuclear installations, and a coordinated and complementary approach to biosafety and biosecurity problems guaranteeing optimal management, in particular of biological risks and threats. Furthermore, the Council (2008c: 21-2) instructed the GSC, in liaison with the Commission, to draw up a document assessing the implementation of the WMD clause which would propose lines of action for improving the process of negotiation of the clause, make proposals for evaluating implementation of that clause by third countries, and present an analysis of the procedure for triggering the clause in the event of non-compliance by a third country.<sup>70</sup>

To further improve coordination, the Council proposed that the competent institutions and working parties present a proposal by the end of the first half of 2009 for the creation in 2010 of a European in-service training course for officials of EU Member States and the EU to combat proliferation of WMDs and their delivery systems. The aim is to improve the level of scientific and technical

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<sup>70</sup> Such a document was produced by the GSC in January 2009 (Council of the European Union, 2009). This document is included in the analysis on legitimacy, see *infra*.



expertise of those staff and to encourage the dissemination of a common European administrative culture of combating proliferation, within a networked system. In an attempt to further improve coordination, the Council (2008c: 24) suggested, *inter alia*, strengthening the WMD-MC, increasing SitCen's participation so that it can present its analyses in competent working parties and the PSC, designating a contact point within the Ministries of Foreign Affairs and the responsible European Institutions for the implementation of the new lines of action.

The Council set itself the goal of achieving the aforementioned objectives in the plan by 2010. By the first half of 2009, the GSC will have drawn up a specific document on the implementation of the strategy and in particular of this plan identifying new lines of action (Council of the European Union 2008c: 25).

### ***Recent Developments in EU Policy on WMDs***

In its 2008 Communication on addressing the international challenge of nuclear safety and security, the Commission (2008a: 7) announced that it would address to the Council and the Parliament a specific Communication on the various EU instruments available in the field of nuclear non-proliferation, in particular under the Euratom Treaty. Very recently the Commission (2009) issued such a Communication on nuclear non-proliferation.

The importance of non-proliferation for the use and future development of nuclear energy was reaffirmed in the Communication updating the Nuclear Illustrative Programme (European Commission 2008b) in the context of the Second Strategic Energy Review (European Commission 2008c). In this respect, the Commission highlighted the need for strengthening cooperation between the European Atomic Energy Community (Euratom) and the IAEA in order to achieve the desired international effect. In this context, a Joint Statement was signed on 7 May 2008 between the Commission and the IAEA to reinforce mutual cooperation on nuclear energy.<sup>71</sup> Recently the EP (2007) reaffirmed the particular importance of the Euratom Treaty in connection with the commitment of Member States which use nuclear energy to comply with international security and non-proliferation standards.

As was mentioned *supra*, the GSC has released a report on the implementation of the WMD clause in January 2009. This report is discussed in more detail in the paragraph on legitimacy. The 2009

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<sup>71</sup> President Barroso and Dr. El Baradei, Director-General of the IAEA, express their commitment to reinforce cooperation on nuclear energy, Press release IP/08/719 of 7 May 2008. Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/719&format=HTML&aged=0&language=EN&guiLanguage=en> [Accessed May 2009].



Communication on nuclear non-proliferation mentions several instruments based on the EC Treaty as well as on the Euratom Treaty, such as the Instrument for Nuclear Safety Cooperation (NSC), the Instrument for Pre-Accession (IPA) and the Instrument for Stability (IfS) which all allow for non-proliferation cooperation with third countries.<sup>72</sup> Through the IfS, the Commission supports third countries to develop training and assistance in the CBRN fields. The focus so far has been on the countries of the former Soviet Union. In 2009-2011, EU assistance will be consolidated there while being extended to new regions of concern, including South-East Asia, the Middle East and parts of Africa, in particular in the nuclear and biological fields. The implementation of UN Security Council Resolution 1540 will be furthered by supporting the IAEA (nuclear fuel bank initiative), engaging former WMD scientists, tackling nuclear smuggling – including deceptive financial practices – and contributing to a more efficient export control system and border monitoring. With around € 300 million for the period 2007-2013, the IfS is a major instrument on non-proliferation seeking to develop a CBRN safety and security culture throughout the world, together with other EU instruments (European Commission 2009: 5).

Under the Euratom Safeguards, the Commission has the responsibility to verify that fissile nuclear materials (plutonium, uranium and thorium) are not diverted from their intended use as declared by the Community users, either those in the nuclear industry, such as nuclear reactor operators and operators of enrichment and reprocessing plants, or those outside the nuclear industry, such as research centres and medical institutes. The Euratom safeguards system acts as a collective system of accounting for and control of nuclear material for all the EU Member States, including nuclear material in the civil nuclear fuel cycle of the Nuclear-Weapon States. An additional Protocol to each of the respective safeguards agreements is in force in all EU Member States. The Commission closely follows the transition of the few remaining new Member States with respect to their adherence to the corresponding trilateral safeguards agreement, including the Additional Protocol between Euratom and the IAEA and the non-Nuclear Weapon States in the EU and the resulting suspension of their bilateral safeguards agreement with the IAEA. Furthermore, since the mid-1990s the Commission's TACIS<sup>73</sup> and now NSC<sup>74</sup> programmes support the transfer of methodologies in nuclear material accounting in the Commonwealth of Independent States (CIS) countries, and the Commission (2009: 6) is preparing to do the same in other third countries.

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<sup>72</sup> See *supra* note 49.

<sup>73</sup> Technical Aid to the Commonwealth of Independent States. A foreign and technical assistance programme launched in 1991 and implemented by the European Commission to help members of the Commonwealth of Independent States (as well as Mongolia), in their transition to democratic market-oriented economies.

<sup>74</sup> This programme is the successor to the TACIS programme and was launched in January 2007.

On the basis of the health and safety provisions (Chapter 3 Euratom), there is well-established legislation in this field.<sup>75</sup> Moreover, Euratom has acceded to the international Convention on the Physical Protection of Nuclear Material<sup>76</sup>, and negotiated amendments to the Convention regarding matters of Community competence. Within the broader CBRN context, the Commission is in the process of developing a policy on CBRN security, fully taking into account the Council Conclusions of December 2007 on addressing chemical, biological, radiological and nuclear risks. This policy is expected to be put forward in mid-2009. From February 2008 to January 2009, a CBRN Task Force has been working at EU level in order to identify concrete actions which need to be taken in order to strengthen CBRN security in Europe. This Task Force was composed of experts from the Member States authorities, the private sector, Europol, Eurojust and the European Institutions (European Commission 2009: 7).

The Commission (2009: 9) goes on to suggest several actions for the future, including the strengthening of support for the NPT, its safeguards and the Additional Protocol, extending cooperation with key nuclear countries through bilateral Euratom agreements, and contributing to the development of an international system of guaranteed supply of nuclear fuel for countries willing to develop nuclear energy without having their own nuclear fuel cycle facilities.

Concretely this means the reinforcement of an international framework for sensitive activities related to the nuclear fuel cycle; contributing to the implementation of the New Lines of Action, which includes provisions with the view to strengthening export controls and reinforcing the capacity to fight illicit trafficking; examining the most appropriate sanctions in case of violation of non-proliferation commitments either by third countries or EU exporters; reinforced cooperation with the IAEA in the field of international safeguards; closer cooperation between the Community and third countries in full compliance with the enhanced NPT regime, in particular for concluding bilateral Euratom cooperation agreements in the field of peaceful uses of nuclear energy; and establishing multilateral fuel supply guarantees in full compliance with the enhanced NPT regime (European Commission 2009: 10).<sup>77</sup>

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<sup>75</sup> See *supra* note 49.

<sup>76</sup> *Convention on the Physical Protection of Nuclear Material*. INFCIRC/274/Rev.1. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/Inf274r1.shtml>. [Accessed May 2009].

<sup>77</sup> Recent action from the EU towards third countries includes, for example, the Presidency Declarations (2009a;b) that were issued after North Korea launched an experimental communications satellite and undertook an underground nuclear test. In these declarations the Presidency calls upon North Korea to fully comply with the international treaty regime.

Furthermore, the Commission (2009: 10) states that the conclusion of bilateral Euratom cooperation agreements on peaceful uses of nuclear energy should become a priority with all key countries wishing to have significant nuclear trade with EU Member States and/or EU industry, in full compliance with all relevant international conventions and NSG guidelines. With regard to the establishment of a nuclear fuel bank, the Commission notes that the decision-making process could potentially be sped up by issuing a mandate to the Commission to contribute to the definition and conditions and modalities for establishing the fuel bank. The document reads that one of the main advantages of a multilateral approach would be to encourage new market entrants to voluntarily abstain from making complex and costly investments which are disproportionate to their needs, while bringing additional guarantees to fuel supply security. In actively contributing to the development of such an initiative, the Union could make full use of the Euratom and other Community instruments, such as the IfS and the NSC, and should take into account both the provisions of international agreements, the Euratom Treaty and the good functioning of the European nuclear market. The Commission (2009: 11) goes on to conclude that since the security of supply for nuclear fuels is essential for guaranteeing non-proliferation, in particular to prevent the spread of sensitive technologies, such as enrichment, the Euratom Supply Agency<sup>78</sup> should become a key actor in this process.

## **Evaluation of the Institutional and Output Dimension**

### ***Coherence***

In its 2008 Communication on the Nuclear Illustrative Programme the Commission (2008b: 3) noted that the concerns of the general public on nuclear safety and waste management still needed to be fully addressed. The Special Eurobarometer survey of June 2008 on attitudes towards radioactive waste shows that a large majority of European citizens consider that the EU is best placed to ensure that the highest level of nuclear safety is guaranteed in Europe. In spite of this wish to see the EU ensure the highest level of nuclear safety, the fragmentation of the regulatory framework in the EU, in particular for the issuing of licences and design certification, presents an obstacle for investments to be made. There is a need for a more coherent economic and regulatory framework. This should facilitate the investments in the Member States which choose to include

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<sup>78</sup> Current contributions of the Euratom Supply Agency to non-proliferation consist of authorising the conclusion of supply contracts, when nuclear materials are physically imported into the Community or exported from the Community; checking that supply contracts are concluded only for peaceful end-uses and that all supply contracts include a safeguards clause; export authorisation processes for nuclear materials produced in the Community.

nuclear energy in their energy mix and will ensure that investment decisions are based on more transparent and comprehensible rules.

In terms of liability it is the operators of nuclear power plant facilities that are liable for any damage caused by them. They are therefore required to take out insurance. National laws are supplemented by a number of international conventions.<sup>79</sup> Compensation above the limits provided for in the conventions and in national legislation needs to be covered by individual insurance, or the State in question must accept responsibility as insurer of last resort, as is the case for liability in other industries. It is in this regard that there is a need for a more coherent and harmonised liability scheme to ensure a comparable level of protection for citizens and to create a level playing field for EU nuclear industry (European Commission 2008b: 11).

The June 2006 European Council's objectives with respect to external action stated that improving the efficiency, coherence and visibility of the Union's external policies was a priority. In particular, the objective, "on the basis of the existing Treaties", to "improve strategic planning and coherence between the Union's various external policy instruments as well as cooperation between the EU institutions and between the latter and the Member States" (Council of the European Union 2006: 3). Furthermore, non-proliferation and disarmament are key areas of CFSP and both EU institutions and Member States are in need of further enhancing synergies of their actions. Member States have taken on the bulk of existing commitments in the area of assistance to third countries. In addition there is a large role for a number of international organisations to which Member States and EU institutions have channelled funds and provided expertise. A whole range of CFSP Actions has been taken by the Council and there are a number of Community instruments which contribute to non-proliferation (see *supra*). Therefore, given the importance of such instruments such as the INSC, the IPA and the IfS that allow for non-proliferation cooperation with third countries, attempts should be made aimed at establishing more coherence and synergy among all EU instruments, and particularly with the Instrument for Stability (European Commission 2009: 5).

Coherence and synergy among EU instruments is essential to support an effective implementation of the SAPWMD. A policy aimed at non-proliferation of WMDs is highly ineffective if there is no adequate response to situations posing a threat to democracy, law and order or to violent situations on the verge of conflict. It is in this regard that the Council (2006: 6) also stressed that the Council

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<sup>79</sup> Paris Convention (OECD) on Third Party Liability in the Field of Nuclear Energy of 1960 bolstered by the Brussels Supplementary Convention in 1963 and entered into force 1968. Vienna Convention (IAEA) on Civil Liability for Nuclear Damage of 1963, entering into force in 1977.

Secretariat/HR and the Commission working together in the WMD-MC should ensure coherence in the planning of activities under the CFSP (Joint Actions) and Community Programmes, in particular Cooperative Threat Reduction programmes.

### *Accountability*

As the majority of important decisions taken in the field of non-proliferation come within the realm of the CFSP, the analysis of accountability is also limited to this area. The primary responsibility for the formulation of the CFSP lies with the national foreign ministers' meeting within the Council. In practice, most decisions are prepared in the PSC, which holds twice-weekly meetings with CFSP ambassadors stationed in Brussels. In PSC meetings, as in the Council, the representatives of the Member States, the Council Secretariat and the Commission are constantly present and contribute to the formulation of common positions. The EP, on the contrary, is represented neither physically by a representative nor virtually by reference to its positions and opinions (Thym 2006: 110).

On the basis of Article 21 TEU, the Parliament is currently only “regularly informed” and “consulted on the main aspects and basic choices” of the CFSP. The Presidency has the obligation to “ensure that the views of the EP are duly taken into consideration”. It is however nowhere defined what this specifically entails. Moreover, Article 21 TEU does not arrange for any Parliamentary involvement in the adoption of *individual* CFSP measures, such as Joint Actions, Common Positions or Common Strategies. Officially the Parliament is not even informed of the topics that are debated in the Council. The Treaty only provides for regular information and consultation “on the main aspects and basic choices” of the CFSP.<sup>80</sup>

Legally speaking, such general information and consultation on the main lines of development falls short of the “consultation procedure” under the EC Treaty, which gives the Parliament at least a formal say during the adoption of individual measures, with disregard of the consultation mechanism resulting in an annulment by the Court of Justice.<sup>81</sup> The Parliament, however, does not find itself “adequately consulted” on the basis of the existing general mechanism of information and consultation. It rejects the approach followed by the Council so far of submitting a descriptive list of CFSP activities carried out in the previous year, and considers such a practice as clearly infringing upon Article 21 TEU as far as prior consultation of the EP is concerned (European Parliament 2005: para. 1).

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<sup>80</sup> TEU. Art. 21.

<sup>81</sup> See ECJ, Case C-138/79 *Roquette Frères v Council* [1980] ECR 3333.

The Interinstitutional Agreement of 17 May 2006 between the Parliament, the Council and the Commission on budgetary discipline and sound financial management<sup>82</sup> provides for the regular holding of CFSP consultation meetings between the Parliament and the Presidency of the Council, and goes some way to amend this issue. However, the Parliament stresses that these meetings should not only be aimed at keeping the Parliament informed about current CFSP missions, but should also be understood as an opportunity to exchange views on the forthcoming needs, the intended actions in the field of CFSP and on medium and long-term strategies of the EU in third countries. The Parliament (2009: para. 1) goes on to state that the extensive and active network built up by the EP with third countries represents a valuable means of assessing the potential needs for CFSP.

The Parliament has rights as co-legislator and budgetary authority under the EC Treaty. It is not surprising therefore that the Parliament has tried to use its powers under the EC budgetary procedure as a means to obtain more control over CFSP decision-making and to extend its powers beyond information and consultation rights. However, nothing guarantees that the Parliament will eventually gain more rights in the CFSP through its budgetary powers. The Council finds that the granting of minimal funds (when compared to the overall external relations budget) is an annoying stumbling block for the realisation of the CFSP. As such, the Council does not seem prepared to yield to Parliament's "democratic blackmail", and has had recourse to extra-budgetary means of financing through national contributions (Thym 2006: pp. 115-116).

## *Legitimacy*

### **Input Legitimacy**

What can be seen from the above analysis of accountability is that Parliamentary scrutiny in the CFSP is rather limited. The level of input legitimacy is therefore relatively low. When looking at public opinion it appears that a large proportion of respondents (68%) are in favour of a common foreign policy (Eurobarometer 2006: 22).<sup>83</sup> WMDs are however nowhere referred to specifically, nor in any of the other Eurobarometer editions. Given the risk associated with terrorist groups acquiring weapons of mass destruction and the widespread recurrence of terrorism as a topic in

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<sup>82</sup> Decision of the European Parliament and of the Council of 22 October 2008 on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, OJ C 139 of 14 June 2006.

<sup>83</sup> Response to question: "What is your opinion on each of the following statements? Please tell me for each statement, whether you are for it or against it. A common foreign policy among the Member States of the EU, towards other countries".

Eurobarometer surveys, terrorism shall be used as a proxy for determining (to a lesser extent) the degree of concern associated with WMDs. This analysis is coupled with two Eurobarometer special reports on, respectively, radioactive waste and nuclear safety.

What can be seen is that public opinion revealed a strong concern for terrorism shortly after the 9/11 attacks, when as much as 86% of Europeans said that they personally feared terrorism (Eurobarometer 2002: i). This percentage has since dropped considerably. Other events did have an impact, as in the wake of the July 2005 London terrorist attacks the percentage rose somewhat to 14% compared to 10% a few months earlier (Eurobarometer 2005: 8).<sup>84</sup> The most recent Eurobarometer (2008) shows that this percentage currently stands at 5%.<sup>85</sup>

Public support for the EU to combat terrorism was very high after 9/11. However, the level of public support since 11 September 2001 has been in serious decline. Judging from Eurobarometer results, it therefore seems that the level of public support is very much dependent on the level of emergency in which the Union finds itself. Currently, it seems that the general public prefers to shift attention to issues such as economic growth, employment and social affairs and public health.

The Special Eurobarometer of June 2008 showed that support for energy production by nuclear power stations has grown significantly since the winter of 2005. In the three-year period between the 2008 survey and the ones of 2005, climate change has become a priority around the world. Measures to combat climate change have become an ever-present topic in public debates throughout the Union. Nuclear power's important role in reducing CO<sub>2</sub> emissions compared with other sources of energy has inevitably influenced public opinion. Furthermore, citizens in countries that have operational nuclear power plants are considerably more likely to support nuclear energy than citizens in other countries (Special Eurobarometer 2008: 5-6). This in itself could make for more nuclear power stations around Europe, with subsequent concerns about security measures involving the adequate handling of nuclear materials.

In terms of the risks associated with nuclear energy, the Special Eurobarometer (2007: 17) on nuclear safety showed that slightly over half of respondents (53%) claimed that the risks of nuclear power as an energy source outweighed its advantages.<sup>86</sup> When the risk factors are differentiated it appears that the vast majority believes that terrorism poses a major threat to nuclear power plants

<sup>84</sup> Response to question: "The two most important issues facing (OUR COUNTRY) at the moment".

<sup>85</sup> Response to question: "For each of the following domains, would you say that the situation in (OUR COUNTRY) is better or less good than the average of the European countries?".

<sup>86</sup> Response to question: "When you think about nuclear power, what first comes to mind? The risks of nuclear power as an energy source outweigh its advantages".



(39%) or is likely to pose a major threat (35%) (Special Eurobarometer 2007: 24).<sup>87</sup> The borderless nature of international terrorism and the cross-border consequences of terrorist actions underline the observation that public opinion on this issue is not influenced by whether or not a country has nuclear power plants (Special Eurobarometer 2007: 30). Moreover, 32% of respondents felt inclined to think that nuclear materials are not sufficiently protected against misuse. A further 14% thought that this was certainly the case (Special Eurobarometer 2007: 24).<sup>88</sup>

As noted, a large majority of European citizens are in favour of ensuring nuclear safety at the EU level (see paragraph 3.1 *supra*). European citizens want the EU to play an active role in ensuring that national practices and programmes for radioactive waste are monitored, harmonised and coherent with specific plans and fixed deadlines (Special Eurobarometer 2008: 44). As such, there appears to be a sufficient mandate for the Union to be active in the field of nuclear safety. Counter-terrorism also has a clear mandate at the EU level, yet its support is waning. Combined with public support for EU action in the nuclear sphere (also with a view to preventing terrorism in this field), however, there appears to be clear support for EU action in the field of WMDs, albeit limited to the nuclear sphere, as no specific information about chemical, biological or radiological weapons was available.

### Output Legitimacy

In terms of the Union's *output* legitimacy we firstly need to look at effective implementation. Here we can use the six-monthly progress reports on the implementation of the SAPWMD issued by the GSC. In the sixth progress report, issued in January 2007, the Council (2007) speaks of several Joint Actions that were undertaken in support of the IAEA: the implementation of Joint Actions 2004/495/CFSP, 2005/574/CFSP and 2006/418/CFSP (see *supra*). These Joint Actions entailed, *inter alia*, the strengthening of the physical protection of nuclear materials and other radioactive materials in use, storage and transport of nuclear facilities; providing legislative and regulatory assistance; the strengthening of security of radioactive materials in non-nuclear applications; and the strengthening of States' capabilities for detection and response to illicit trafficking (Council of the European Union 2007: 3-5).

The IAEA is said to have completed the implementation of Joint Action 2004/495/CFSP in December 2007 (Council of the European Union 2008b: 10). Assistance projects in 22 countries on

<sup>87</sup> Response to question: "To what extent do you agree or disagree with each of the following statements? Terrorism is a major threat to nuclear power plants".

<sup>88</sup> Response to question: "To what extent do you agree or disagree with each of the following statements? The use of nuclear materials is sufficiently protected against misuse".



the basis of Joint Action 2005/574/CFSP were implemented by the end of September 2008, after having initially been prolonged (Council of the European Union 2008b: 10).<sup>89</sup> Assistance projects in 44 countries on the basis of Joint Action 2006/418/CFSP have been implemented or were in the process of being completed by the end of 2008 (Council of the European Union 2008b: 10).<sup>90</sup> Furthermore, Joint Action 2008/314/CFSP, enlarging the scope of application to countries in Southeast Asia, was adopted on 17 April 2008 (see *supra*).

Several projects were conducted in Russia and the CIS in the framework of the TACIS programme, aimed, among other things, at combating the illicit trafficking of nuclear materials. Seven past and ongoing projects in three countries, for a total amount of 14.7 millions EUR, have been or are being implemented. For the period 2005-2010, the Joint Research Centre support to the TACIS programme has been estimated at 30 millions EUR and concerns 14 projects: 7 in the Russian Federation, 2 in Ukraine, 2 in Kazakhstan, 2 in Armenia and 1 multi-country project. 15.4 millions EUR had already been committed by the end of 2005. In 2008, the preparatory work to place all necessary service contracts in the beneficiary countries had been finalised. By the end of 2008, contracts were in force in Russia, Ukraine, Armenia, Azerbaijan, Moldova and Georgia. The projects to be implemented before 2013 are aimed, on the one hand, at enhancing nuclear safeguards and nuclear material accountancy and control, and, on the other hand, at fighting illicit trafficking of radioactive and nuclear materials and related border monitoring activities. In parallel, complementary Administrative Arrangements have been signed under the IfS, to provide necessary equipment and initiate support to Belarus in fighting against illicit trafficking. Finally, preparatory work that will be financed under the IfS and the NSC has been conducted to complete the above mentioned work and address new geographical areas in the Mediterranean Basin and South East Asia (Council of the European Union 2008b: 14-5).

With regard to support for the CTBT the Council adopted Joint Action 2006/243/CFSP (see *supra*), which allowed for the development of capacity, through e-learning, for the training of station operators of the stations of the CTBT monitoring network (Council of the European Union 2008b: 5-6). Furthermore, the CTBT Secretariat concluded a financial agreement with the Commission in July 2006. Following completion of the procurement process of the CTBTO, implementation of the project is now ongoing (Council of the European Union 2008b: 18). In June 2007, The Council adopted Joint Action 2007/468/CFSP (see *supra*). This focuses on strengthening capabilities in the

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<sup>89</sup> See (Council of the European Union 2008b: 11) for a full list of countries.

<sup>90</sup> See (Council of the European Union 2008b: 12) for a full list of countries.

field of radionuclide monitoring, in particular noble gas detection. It contributed to the conduct of the field exercise in the area of on-site inspection carried out in Kazakhstan in Autumn 2008. The financial agreement between the CTBTO and the European Commission was concluded in October 2007. Implementation of the projects is proceeding on schedule. In July 2008, the Council adopted Joint Action 2008/588/CFSP (see *supra*), which provides for continuation of efforts to strengthen capabilities in the field of radionuclide monitoring. In addition, it provides for capacity building and technical assistance in African states signatories to the CTBT, aimed at enabling them to fully benefit from and participate in the CTBTO monitoring and verification system. Implementation of this Joint Action is in the process of being launched (Council of the European Union 2008b: 19).

With regard to chemical weapons, the Council adopted Joint Action 2005/913/CFSP (see *supra*) which foresaw activities in support of the OPCW, which aims at promoting the universalisation of the CWC, national implementation and international cooperation. Activities involved, among others, organising a workshop on the universality of the Chemical Weapons Convention in order to promote awareness of the Convention among States in the Mediterranean Basin, the Middle East, and neighbouring regions (under Joint Action 2007/185/CFSP); the awarding of grants to national authorities; the organisation of an exercise and evaluation meeting in Algeria and the updating of the scheduled chemicals database for verification purposes (Council of the European Union 2008b: 20-21).<sup>91</sup> The financial agreement between the Commission and the OPCW Technical Secretariat on the basis of Joint Action 2005/913/CFSP was extended until 7 December 2008. This allowed for the organisation of an EU sponsored day for national authorities in The Hague in December 2008. Attendees included representatives of the OPCW Member States National Authorities, Chemical associations from EU and non-EU countries and other representatives from the industry (Council of the European Union 2008b: 19). The financial agreement between the Commission and the OPCW Technical Secretariat signed in August 2007 was extended until 31 May 2009 in order to allow for the implementation of foreseen activities, such as the organisation of a workshop in the Mediterranean Basin and the Middle East.

With regard to biological and toxic weapons, the Council adopted Joint Action 2006/184/CFSP (see *supra*), which also aims at the universalisation of the Convention as well as ensuring the full national implementation of its provisions. Regional seminars were organised and technical legislative drafting was offered to this end (Council of the European Union 2007: 7-10). 2008 saw the adoption of Joint Action 2008/858/CFSP (see *supra*) in support of the BTWC. Other activities in

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<sup>91</sup> See (Council of the European Union 2008b: 20-21) for a full list of specific actions conducted.

the area of bio-security and bio-safety include the implementation of Joint Action 2008/307/CFSP (see *supra*), which was launched in the framework of the SAPWMD in Autumn 2008. It covers awareness raising, training and networking activities in a national, subregional and regional context; and country-specific technical assistance to develop and implement a bio-risk reduction management plan, particularly concerning laboratory practice and safety, to harmonise it with integrated national preparedness plans, and to strengthen the performance and sustainability of national laboratories by connecting them with regional and international networks. In November 2008, the EU carried out a fact finding mission to a laboratory facility proposed by Ukraine. The objective was to assess the feasibility of funding two projects in Ukraine to enhance biosecurity in laboratory facilities and to upgrade their physical protection. The outcomes of that fact finding mission are being examined by the relevant Council working party (Council of the European Union 2008b).<sup>92</sup>

Efforts in support of the membership of all new EU Member States in the MTCR were pursued bilaterally and during the MTCR Plenary in Canberra in November 2008. Gulf Cooperation Council (GCC) countries were added to the list of priority outreach destinations and Member States have been invited to enhance their work with them on MTCR-related issues (Council of the European Union 2008b: 23). Furthermore, on 12 May 2008 the Council adopted a second Joint Action in support of United Nations Security Council Resolution (UNSCR) 1540, which aims at strengthening the skills and capacities of third countries' state officials involved in the export control process. The Joint Action is to be implemented by the UN Office for Disarmament Affairs (UNODA) and foresees six regional workshops (covering South-East Asia, Latin America, Middle East and Arab countries, Central America, Africa and Pacific Islands) with the participation of up to three State officials involved in the export control systems of 8-10 beneficiary countries invited to the seminar. Seminars are planned in Brazil (end of November 2008) Qatar (January-February 2009) and possibly in Thailand. The Stability Instruments are to provide the possibility of national capacity building projects. Synergies between these projects and those financed through the CFSP are being sought (Council of the European Union 2008b: 24).<sup>93</sup>

The agreement with Russia on the basis of Joint Action 2004/796/CFSP (see *supra*) was signed in 2006 (Council of the European Union 2007: 12). The first steps on the Russian side have been taken and work on technical planning of the project is making progress. This project aims to enhance the

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<sup>92</sup> See (Council of the European Union 2008b: 22) for a detailed list of activities.

<sup>93</sup> Also see Council Joint Action 2008/368/CFSP *supra*.

physical protection of an important Russian nuclear research site against possible theft of nuclear material and acts of nuclear terrorism (Council of the European Union 2008b: 25). The implementation of the existing Council Joint Action in support of Chemical Weapons destruction in Russia<sup>94</sup>, which provided funding to complete the electricity supply infrastructure at the Shchuch'ye chemical weapon destruction facility, was completed on schedule (Council of the European Union 2008b: 25).

The EU and its Member States have held numerous seminars and meetings providing export control training and assistance for states in need of technical knowledge. Such states include the Western Balkan countries, Moldova, Bulgaria and Romania. In addition, the cooperation and assistance programmes under the 2005 Pilot Project programme of the European Commission, implemented by BAFA (Bundesamt für Wirtschaft und Ausfuhrkontrolle, Germany's export control agency) with the assistance of national experts from Member States, are being undertaken in Albania, Bosnia and Herzegovina, China, the former Yugoslav Republic of Macedonia, Montenegro, Morocco, Serbia, Ukraine, and the United Arab Emirates. Cooperation and assistance to Russia is also ongoing under the EU–Russia cooperation programme, with the same mechanism as for the Pilot programme (Council of the European Union 2008b: 27).

Further to discussions in a subgroup of the Dual Use Working Party during 2007, considerations are underway in the Commission Services as to the possibility of proposing additional "Community General Export Authorisations", which would facilitate trade in certain less sensitive dual use items to certain "safe" destinations. Work has continued on the adoption of a Council Regulation amending and updating Regulation (EC) No 1334/2000 (see *supra*), which takes into account changes to control lists agreed by the export control regimes in 2007 and 2008. Furthermore, the EU and its Member States have held numerous seminars and meetings providing export control training and assistance for states in need of technical knowledge. Such states include the Western Balkan countries, Ukraine and Moldova (Council of the European Union 2008b: 26).

Since November 2003, non-proliferation clauses have been inserted into all new or renewed mixed agreements and agreements under Art. 24 TEU negotiated with third countries, now covering almost 100 countries. Additional text on non-proliferation and disarmament related issues has occasionally been included in preambles or other relevant articles of treaties in order to respond to specific concerns of the EU's partners, in particular in the fields of conventional weapons and small arms and light weapons (SALW). Although not legally binding, a non-proliferation section reflecting

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<sup>94</sup> See Council Joint Action 2007/178/CFSP, *supra*.

the content of the WMD clause has also been inserted into several political documents, such as the Action Plans for the countries covered by the European Neighbourhood Policy and several Joint Declarations (Council of the European Union 2009: 6; 2008b: 29). In particular, the EU has organised several thematic seminars, outreach activities and technical assistance visits targeting numerous third countries and supporting the universality and full implementation of several international instruments. As a result of these activities, since the adoption of the WMD strategy in December 2003 several countries have been assisted and have signed and ratified important international instruments.<sup>95</sup>

Additional sanctions were taken against Iran and North Korea for, respectively, not suspending all enrichment activities and for conducting nuclear tests (Council of the European Union 2008b: 17). With regard to Iran, in August 2008 the Council adopted Common Position 2008/652/CFSP, which goes beyond a simple transposition of UN Security Council Resolution 1803 (measures on financial vigilance, new embargoes on sensitive goods, restraint in entering into new commitments in granting export credits). The corresponding EC Regulation (1110/2008) has been approved by the Council and entered into force on 12 November 2008. A list of entities and individuals falling under a freeze of funds and a travel ban under the Common Position 2007/140/CFSP regarding Iran was adopted by the Council in June 2008 (see *supra*). With regard to North Korea, Joint Action 2007/753/CFSP (see *supra*), which was already adopted on 19 November 2007 by the Council of the EU is now being implemented (Council of the European Union 2008b: 8).

The Council is said to be preparing a Joint Action for the establishment of an EU emergency fund for the securisation of radio-active materials and sources. The objective of the activities to be carried out in the framework of this Joint Action is to secure vulnerable/orphan radio-active materials and sources in third countries in case of emergency. It would be used in cases where flexibility and rapid reaction are needed. Furthermore, the Commission and Member States are proceeding with the ratification of amendments to the Convention on the Physical Protection of Nuclear Material with a view to its early entry into force. This will result in the strengthening of the physical protection regime within the EU and support the efforts of the EU to ask for early ratification of CPPNM amendments by all States (Council of the European Union 2008b: 14).

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<sup>95</sup> 99 countries were assisted and 27 (of which 14 had received assistance) ratified the CWC since December 2003; 70 countries received assistance and 7 (of which 6 had received assistance) ratified the BTWC; 34 countries ratified the CTBT (none had received assistance); 46 countries received assistance and 45 (of which 15 had received assistance) ratified the IAEA Comprehensive Safeguards and Additional Protocols.

The WMD-MC held regular meetings during the second semester of 2008, bringing together experts from the Council Secretariat (Geographical desks, Directorate-General for External Relations (DG RELEX), Legal Service, SitCen, Office of the Presidency, etc.) and the Commission (DG RELEX, DG Health and Consumer Affairs (DG SANCO), JRC, etc.), who participated according to the themes on the agenda. The agenda usually focussed on two items: one thematic issue followed by a general exchange of information. The exchange of information has helped to give an overview of various ongoing and planned activities and assistance projects under various financial instruments available to the EU (Council of the European Union 2008b: 32).

## Conclusion

In sum, the consistency in both the internal and external action of the Union is in need of some strengthening as the various instruments that are at the disposal of the Community and the Council do not always ensure the full use of available synergies. Internally, the level of coherence between the Member States and the Union is hampered by the fragmentation of the regulatory framework (c.f. *supra*). In terms of external action, an insufficient use of the IfS does not make for much added value in adding “WMD clauses” in international agreements, and a Regulation or Common Position directed at a third country has less effect than envisaged if the country in question is not sufficiently addressed through the IfS. A solid preventative approach should be the basis of *enforced* action, thereby contributing to overall coherence in external action. In addition, the EC’s current observer status at the IAEA hampers the Community from fully enacting its role on the international scene with regard to issues under the IAEA’s purview related to non-proliferation. An upgrade of its observer status would be more in line with its competences in the area of peaceful research and the use of nuclear energy and would serve to enhance coherence in external action.

Furthermore, the degree of Parliamentary involvement in the CFSP is highly inadequate and the level of democratic accountability is very low. The Treaties do not currently provide for more involvement of the Parliament. Moreover, reports issued by the Parliament only provide for the Parliament to comment in retrospect on developments that have occurred within the CFSP, thereby putting an even larger cap on the level of accountability. Currently, the only means of control is available through budgetary powers under the EC Treaty, yet the Council manages to escape this scrutiny by resorting to extra-budgetary means.

Finally, one can say that the level of output legitimacy of EU WMD policy is high in terms of attaining its deadlines. Many initiatives are developed and are also carried out in accordance with

the prescribed schedule. EU policy in the areas of export controls, stimulating the safe management of nuclear sites and materials, efforts aimed at ratification of international instruments seem to live up to their standards. However, it must be noted that it remains to be seen how effective the pressure resulting from these policies really is. The most visible threats to the general public of WMDs (Iran and North Korea) show no signs of reducing in spite of the significant amount of legislation and the considerable ratification processes of international instruments that have taken place due to stimuli emanating from the Union.

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## EU-GRASP

Changing Multilateralism: the EU as a Global-regional Actor in Security and Peace, or EU-GRASP in short, is an EU funded FP7 Programme. EU-GRASP aims to contribute to the analysis and articulation of the current and future role of the EU as a global actor in multilateral security governance, in a context of challenged multilateralism, where the EU aims at “effective multilateralism”. This project therefore examines the notion and practice of multilateralism in order to provide the required theoretical background for assessing the linkages between the EU’s current security activities with multi-polarism, international law, regional integration processes and the United Nations system.

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