



ReShape Online Papers Series

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**European Union's WMD Non-proliferation policy:
the competence-sharing between EU institutions**

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Abstract

This paper seeks to analyse the formation and change of the European Union's WMD non-proliferation policy. The change of this policy is the result of the double, parallel evolution of the WMD concept and of the EU institutional framework.

In section one, the two evolution processes are reviewed through the analysis of the EU's key-documents about the WMD non-proliferation issues. Section two overviews the implementation of the EU non-proliferation policy and emphasizes the significance of the "horizontal" nature of this policy field. Section three sorts out and examines the main constraints on the effectiveness of the EU WMD non-proliferation policy. The Conclusion makes the overall assessment of the policy and addresses its future perspectives.

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INTRODUCTION

The EU WMD non-proliferation policy is explained by the experts as the result of the evolution of two parallel processes: the evolution of the concept of Weapons of Mass Destruction (WMD) and its implications at the world level and the evolution of the EU' s institutional framework. Although this last evolutionary process has its own roots and dynamics, it can largely be explained as a reaction to the first evolutionary process. Therefore, the institutional development of the EU has been a necessity to develop a EU WMD non-proliferation policy, which at its turn, has been a reaction to the changed global security environment.

EU WMD non-proliferation policy is considered as still fragmentary and disappointing, mainly because of the “young age” of this policy area, on one side and, on the other side, because the EU is a still-in-evolution political entity looking for a place and a role at the global level and, at the same time, looking for an internal equilibrium (between Member States and EU institutions and between the EU institutions themselves). The consequences of this “double immaturity” are, on one hand, an overlap of competencies between MSs and EU institutions and within EU institutions; on the other hand, some lacks and, last but not least, a certain distrust on the side of MSs toward a more “Communitarian” framing of the issue.

At the same time, the EU is trying to develop its own security model, based on a multilevel and global approach which seeks to achieve security goals through several policy areas, dulling (or trying to dull) in this way and little by little, several existing barriers.

At the beginning of the 1990s, two closely connected factors, related to the transformed security environment, compelled the European Community to upgrade its role in non-proliferation. First, the end of the Cold War which allowed for a strengthening of multilateral approaches (since during the Cold War nuclear arms control had remained an almost exclusive domain of the superpowers) and second, the disclosure of the Iraqi nuclear programme in the aftermath of the Gulf War in 1991 which delivered a powerful impulse for increased international efforts in preventing proliferation.¹

¹ Portela, C., 2003.

At the dawn of the 21st century, several events caused the “realistic turn”² of the EU concept of security and strategies such as the terroristic attacks of New York (9/11/2001), Madrid (3/11/2004), and London (7/7/2005). This second “turn-point” in IR raised the problem of new global threats, re-shaping the concept of security and challenging the States’ capacities to face it.

These global events have to be considered in order to better understand and explain the evolution of the EU’ s commitment to non-proliferation.

Section I analyses the EU’ s key-documents related to WMD non-proliferation; section II explores the policy implementation, while section III takes into account some constraints to an EU non-proliferation policy.

ANALYSIS OF THE EU’S KEY-DOCUMENTS

A number of developments catalysed the creation of an EU non-proliferation strategy in 2003. First of all, at the time, the EU was under pressure to respond to the possibility of non-state actors carrying out mass-impact terrorist attacks, including attacks using WMD. Another reason was the imminent enlargement of the EU to include 10 new members³. A framework was needed to accommodate new states with different security capabilities, traditions and routines. Finally, the United States-led invasion of Iraq in March 2003, which intended “to eliminate a proliferation threat”, revealed policy differences both within the EU Member States and between the EU and the United States⁴. The need to find unity in this critical scenario became stronger than ever.

As emerged from the Extraordinary European Council, which took place in Brussels on 21 September 2001, the development of the CFSP and the making operational of the European Security and Defence Policy (ESDP) were seen as *conditio sine qua non* to face the new challenge.⁵

At the Thessaloniki Summit, the European Council adopted a Declaration⁶ on the Proliferation of WMD along with a set of “Basic Principles for an EU Strategy against Proliferation of WMD” and its corresponding “Action Plan”.⁷

² Hyde-Price, A., 2008.

³ The 10 new Member States are: Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia, Lithuania, the Czech Republic and Slovenia.

⁴ Grip, L., 2009.

⁵ Conclusions and Plan of Action of the Extraordinary European Council Meeting, Brussels, 21 September 2001.

⁶ For the text of the Declaration, see Annex II to the Presidency Conclusions, Thessaloniki European Council, 20 June 2003.

These documents originated in a Council decision dating back to April 2002⁸, which was taken within the framework of the fight against terrorism.⁹ The European Council announced that it intends to further elaborate a coherent EU strategy by the end of the year and continue to develop and implement the EU Action Plan “as a matter of priority”¹⁰. The “Basic Principles” is meant to be a “living document” subject to review and updating.¹¹

1.1 The European Security Strategy

The EU “Security Strategy”(ESS), which was adopted on the same occasion in the form of another report by the High Representative for CFSP Javier Solana, unequivocally identifies WMD as “the single most important threat to peace and security”.¹²In the address to the 58th General Assembly, the Presidency pointed out the non-proliferation of WMD as a priority.¹³It also indicated that “the EU is determined to tackle the threat posed by the proliferation of weapons of mass destruction”.¹⁴

In October 2003, Solana appointed Annalisa Gianella as his personal representative on WMD proliferation. The final version of the WMD Strategy was

⁷ High Representative of the CFSP Mr. Javier Solana, “Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction” and “Action Plan for the Implementation of the Basic Principles for an EU-Strategy against Proliferation of Weapons of Mass Destruction”, 16 June 2003.

⁸ Council of the European Union, Conclusions of the 2421st General Affairs Council Meeting, 15 April 2002, p. II to VI.

⁹ The document that launched the fight against terrorism, “Conclusions and Plan of Action” of the Extraordinary European Council meeting on 21 September 2001 did not include non-proliferation as a part of the series of proposed measures. While the Ghent European Council Conclusions first referred to the threats of the use of biological and chemical means in terrorist operations, non proliferation was first mentioned in the context of dialogue with third countries in the “Declaration by the European Council on the Contribution of the CFSP, including the ESDP, to the fight against terrorism” released at the Seville European Council. See Annex V of the Presidency Conclusions, Seville European Council, 22 June 2003.

¹⁰ See Declaration, point 3.

¹¹ See Council of the European Union, Conclusions of the 2518th External Relations Council meeting, 16 June 2003, p.9.

¹² High Representative of the CFSP Mr. Javier Solana: “A secure Europe in a better world”, 20 June 2003, p.5.

¹³ Statement by the Prime Minister of Italy H.E. Silvio Berlusconi on behalf of the European Union, 58th session of the General Assembly of the United Nations, New York, 23 September 2003.

¹⁴ EU Priorities for the 58th UN General Assembly, 1 July 2003.

published alongside the European Security Strategy (ESS) called “A Secure Europe in a Better World”, in December 2003.¹⁵

The ESS lists WMD proliferation among the “New Threats”, together with “Terrorism” and “Failed States and Organized Crime”. As the document states, these three international threats have to be analyzed and faced together due to their inter-dependency which leads to a unique “very radical threat”.

The ESS document is divided in three main sections: in the first section the three new threats are listed; in the second part the strategic objectives are pointed out, while in the third section detects the policy implications for Europe.

It is evident from the redaction of the document how proliferation of WMD and in particular nuclear proliferation and its related threats are a highly relevant concern for the EU. In framing the issue, WMD proliferation is defined as “the single most important threat to peace and security among nations” and the possibility of a WMD arms race is envisaged, in particular in the Middle East which is not, however, the only identified region considered at risk; in fact, while pointing out the strategic objectives of the EU, North Korea and South Asia are also located as potentially dangerous zones that deserve a particular attention.

The analysis of the nature of the threats mentioned in the ESS leads to the identification of “certain common points” between them (they are often distant, dynamic and none of them is purely military) which serve as base upon which start to conceive a strategy for action. As consequence of the nature of the threats, the traditional meaning and concept of security is totally reshaped¹⁶, implying a more dynamic and versatile EU’s (re)action. Due to the often distant nature of the threats, the EU’s strategy has to be more dynamic since “the first line of defence will be often abroad”, while the fact that these new menaces are dynamic involves the EU’s capacity to “act before a crisis occurs” and therefore it implies a further development of an EU’s ability of conflict prevention and threat prevention. Third necessary requirement to the EU, in order to face the new challenges and consequence of the third common point between the threats (none of them is purely military), is the development of mixed capabilities, both military and civilian.¹⁷ Concerning this last point, a “two speeds” EU’s defence

¹⁵ European Council, “A Secure Europe in a Better World: European Security Strategy”, Brussels, 12 December 2003.

¹⁶ The ESS in particular refers to the concept of self-defence based on the threat of invasion, up to and including the Cold War (ESS, p.11).

¹⁷ In the ESS, these EU’s necessary requirements are defined through three adjectives: more active, more coherent and more capable” (ESS, p.12).

system can be identified: while the EU has already developed efficient civilian capabilities and some civilian instruments are already identified in the ESS itself to face the threats and especially the proliferation issue,¹⁸ military capabilities are lacking and this is quite clear from two facts. First of all, the explicit reference to the US as guarantor, through NATO, of the EU' s security¹⁹ and in general terms, the fundamental support from and dependence to NATO when dealing with military operations such as the military operation in FYROM and the role of NATO in the Balkans and second, the admission of a need to develop military capabilities²⁰ (and this is clear from the third section of the ESS), but above all, the need of coordination /coherence between EU' s instruments in the CFSP and ESDP and also between EU' s instruments and member states' s external relations.

Is ESS significant to non-proliferation of WMD?

In the EU Security Strategy, the proliferation of WMD is described as “potentially the greatest threat to our security”²¹. However, it is worth noticing that the ESS is a political declaration which does not have any legally binding value but its existence had and has a remarkable weight in the EU' s policy. Leaving aside the controversial real reason for its own existence²², the ESS puts the basis for an European WMD non-proliferation strategy by locating hot zones (namely North Korea, South Asia and the Middle East), declaring the modus operandi (basically multilateralism in international organizations²³ and partnerships with key-actors²⁴)

¹⁸ “Trade and development policies can be powerful tools for promoting reform” (ESS, p.10) and “Proliferation may be contained through export controls and attacked through political, economic and other pressures while the underlying political causes are also tackled” (ESS, p.12).

¹⁹ “The United States has played a critical role in this success through its support for European integration and its security commitment to Europe through NATO” (ESS, p.1).

²⁰ On this point the ESS refers to “strategic culture”: “We need to develop a strategic culture that fosters early, rapid, and when necessary, robust intervention. We should think particularly of operations involving both military and civilian capabilities. This is an area where we could add particular value ” (ESS, p.13).

²¹ European Council, ESS, (note 79), p.3.

²² A EU' s reaction to external events such as the terrorist attacks and the US-led invasion of Iraq which pushed the EU to develop an independent strategy or in other words, an independent EU' s internal evolution process or a reaction to the adoption of the US' s strategy and its consequences on the internal division among EU' s member states and therefore a call for European unity without a real further development from the strategic point of view. (See Toje, A., 2005).

²³ “We need to pursue our objectives both through multilateral cooperation in international organisations and through partnerships with other key actors or regions” (ESS, p.15). Concerning the threat of WMD proliferation, the international organization regime quoted in the ESS is the International Atomic and Energy Agency: “The Union

and pointing out some instruments (mainly measures to tighten export control and deal with illegal shipments and illicit procurement, joint disarmament operations, support to third countries combating terrorism and security sector reform).

1.2 Basic Principles for an EU Strategy Against WMD Proliferation and related Action Plan for the Implementation

On 14 April 2003 the Council instructed the Secretary General/High Representative, in association with the Commission, and the Political and Security Committee, to pursue work on proliferation of weapons of mass destruction with a view to make proposals for submission to the European Council. Member States have contributed to a number of specific proposals. Drawing on these, as well as on the targeted initiative to respond effectively to the international threat of terrorism, adopted by the Council on 15 April 2002, the Council Secretariat and the Commission have drawn up a set of basic principles defining the broad lines for an EU strategy against proliferation of WMD.²⁵

On 10 June 2003, the Political and Security Committee of the EU agreed on the Basic Principles for an EU Strategy Against Proliferation of Weapons of Mass Destruction. The document includes an Action Plan for the Implementation of the Basic Principles for an EU Strategy Against Proliferation of Weapons of Mass Destruction. The Action Plan grouped measures to be undertaken by the EU into two categories: measures for immediate action and measures to be implemented over a longer period.²⁶

The Basic Principles is a thirteen points document resuming in general lines the strategy that the EU intended to adopt in WMD non-proliferation matters.

As already stated in the ESS, a link between proliferation of WMD and terrorism is made in the potential scenario of terrorists acquiring WMD or related materials,

has just agreed a further programme of action which foresees steps to strengthen the International Atomic and Energy Agency, measures to tighten export controls and to deal with illegal shipments and illicit procurement.” (ESS, p.11).

²⁴ The quoted countries are: the USA, Russia, Japan, China, Canada and India (ESS, p.15).

²⁵ Basic Principles for an EU Strategy against Proliferation of WMD, European Union @ United Nations: Partnership in Action: http://www.eu-un.europa.eu/articles/en/article_2478_en.htm.

²⁶ The EU and non-proliferation of WMD, Stockholm International Peace Research Institute (SIPRI): http://archives.sipri.org/contents/expcon/eu_wmd.html.

becoming “an additional threat to the international system with potentially uncontrollable consequences”.²⁷

Concerning the approach that the EU intends to apply to reach its goals, multilateralism and commitment to existing international organizations, regimes and norms engaged in WMD non-proliferation matters is confirmed, as well as the task of implementing and universalising the existing disarmament and non-proliferation norms, in particular the NPT. This “normative/institutional approach” together with political dialogue and diplomatic pressure are the first instance instruments set to pursue the objectives²⁸, while some other coercive measures under Chapter VII of the UN Charter and international law, such as sanctions (selective or global), interceptions of shipments and, as appropriate, the use of force, are listed as last resource, in case of non compliance. It is expressly written in the document that, for this second order of instruments, the UN Security Council should play a central role, at the point that it is defined the “final arbiter on the consequences of non-compliance”. Apart from the role of contributing guarantor on the countries’ compliance to non-proliferations policies, much of the EU’s strategy is “prevention-oriented” (one more element taken from the ESS). On the non-compliance side, in order to deter it, prevention is made through the establishment of additional international verification instruments and the use of non-routine inspections under international control beyond facilities declared under existing treaty regimes, but, in a broader sense, the EU recognises the importance of applying a crisis prevention strategy by fostering the establishment of regional security arrangements and regional arms control and disarmament processes. For this purpose, particular attention is paid to the Mediterranean region. Cooperation with key-partners (USA and the Russian Federation) is encouraged. Last, cooperation with the EU SitCen is mentioned to prepare and update threat assessment using all available sources, contributing in this way to the crisis prevention process.

The importance of this preliminary strategy lays primarily in the identification of non-proliferation as a priority for the Union, giving it a strong mandate to mobilise resources to this aim, both internally and in its external activities. Notably, the first measure suggested in the Action Plan is the drafting of a detailed plan of

²⁷ Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction, p.1.

²⁸ In the Basic Principles, these instruments are said to form “the first line of defence” (point 4, p.1).

diplomatic action, which effectively compels Member States to improve co-ordination and to search for political agreement.²⁹

These broad objectives have been translated down to some more precise initiatives. Many of them are intended to have an EU-internal function: some are institutional measures designed to upgrade the capacity of action of the Union, such as setting up a Monitoring Centre on WMD disarmament and non proliferation, the inclusion of a permanent WMD threat assessment in the tasks of the EU Situation Centre, and the creation of specific Community budget line for non-proliferation and disarmament of WMD.

Other measures are intended to strengthen EU internal legislation, such as the adoption of a legal framework for the criminalisation of illegal brokering of WMD-related items.

A further group of measures aims at enhancing the efficiency of the Member States' export controls, most notably through the adoption of a policy of no export of nuclear related materials and equipment to the countries that have not ratified the IAEA Additional Protocols.

Finally, a few of the measures listed are effectively proposals for EU external action ripe to be translated into CFSP instruments, such as promoting the negotiation of an agreement on the prohibition of the production of fissile material for nuclear weapons (FMCT), enhancing the financial contribution to IAEA safeguards, promoting catch-all clauses in export control regimes, or renewing the CTR programme in Russia.

On the whole, the documents' principal emphasis is placed on enhancing the effectiveness of the existing regimes rather than suggesting new steps for the non-proliferation agenda; the only exception is the introduction of conditionality, as stated in the Action Plan "the EU will consider the introduction of an effective carrot and stick policy linked to non-proliferation commitments in its relations with third countries. This will be done in particular in the context of cooperation agreements or assistance programmes".³⁰

²⁹ Portela, C., 2003, p.24.

³⁰ Council of the European Union, "Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction", p.6.

1.3 EU Strategy Against Proliferation of Weapons of Mass Destruction

On 12 December 2003, the “EU Strategy Against Proliferation of Weapons of Mass Destruction” was agreed on at the Council in Brussels.

The language adopted in the strategy recalls the other key documents (the ESS, the Basic Principles and the related action plan). A direct link to the ESS is made in the document³¹.

The WMD proliferation and their means of delivery are considered a “growing threat to international peace and security”³², creating a sort of climax in the definition and framing of the issue through the documents: in the ESS, the WMD proliferation is indicated as “potentially the greatest threat to our security”³³, while already in the Basic Principles the potentiality of the threat disappears, leaving the existence of a real (perceived) “international threat to peace and security”³⁴. Last, in the Strategy the WMD proliferation threat is even a “growing threat”³⁵, adding a dramatic tone to the international scenario.

It is worth noticing that already in 2003, before the adoption of the Treaty of Lisbon, the Strategy talked about “EU’ external action” and framed the fight against proliferation of WMD as a central challenge to this action. For example, as suggested in some paragraphs of the Strategy when stating that the EU will face the challenge using “all the instruments and policies at its disposal”³⁶ and again in chapter II affirming that “(...) our conviction that non-proliferation should be mainstreamed in our overall policies, drawing upon all resources and instruments available to the Union (...)”.³⁷ Some of these EU policies are listed in the document itself when stating that “At the same time, the EU will continue to address the root causes of instability including through pursuing and enhancing its efforts in the areas of political conflicts, development assistance, reduction of poverty and promotion of human rights”³⁸. Although it is true that a link had been already established and stated between the non-proliferation “policy” and other EU’ s policies such as trade and development, a series of formal elements within

³¹ ESS, introduction, p.2:” As the European Security Strategy makes clear, the European Union cannot ignore these dangers (...)”.

³² Council of The European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels, 10 December 2003, p.1.

³³ ESS, p.1.

³⁴ Basic Principles, p.1.

³⁵ Council of The European Union, WMD Strategy, (note 93), p.1.

³⁶ Ibid., p.2.

³⁷ Ibid. p.5.

³⁸ Ibidem.

the treaty did create a sort of *separé* between the WMD issue and the other communitarian policies (see *infra*).

The strategy included operational elements such as the establishment of a monitoring centre to collect information and intelligence relevant to the strategy's implementation and a biannual review of implementation by the General Affairs Council. The WMD Strategy offered a multilayered approach that was based on "effective multilateralism" which implies the universalization and strengthening of the existing non-proliferation treaties and agreements and providing political, financial and technical support to verification regimes, thus ensuring detection and compliance.

The WMD Strategy, like the ESS, points out two typologies of *modus operandi*: preventive measures (which is the preferred way of action) and coercion as last resource in case preventive measures fail. But in this second case, as it was already stated in the ESS, the EU still recognized the United Nations Security Council as the "final arbiter".³⁹

The only coercive and "fully European" policy used by the EU to promote non-proliferation was the so called WMD clause⁴⁰ (already suggested in the June 2003 Basic Principles).

1.4 New Lines for Action

In 2008 France initiated a review of the WMD Strategy, and the Council Conclusions of December 2008 endorsed a statement on international security that identified specific actions "to enable the EU to play a more active role in combating terrorism, proliferation of weapons of mass destruction, organised crime and cyber attacks".⁴¹ The Council asked Member States to give substance to this statement by adopting appropriate policies and instruments, which then formed the basis of the New Lines for Action (NLA).⁴² New Lines read that "Close coordination between EU institutions and Member States will be necessary to ensure coherence and synergies between ongoing and future activities and

³⁹ Hyde-Price, A., 2004.

⁴⁰ See *infra*.

⁴¹ Council of the European Union, Brussels European Council 11–12 December 2008: Presidency conclusions, 17271/1/08 Rev 1, Brussels, 13 Feb. 2009, p. 18. See also Council of the European Union, Implementation of WMD Strategy: updated list of priorities, 10747/08, Brussels, 17 June 2008.

⁴² Council of the European Union, Statement on tighter international security, 16751/08, Brussels, 3 Dec. 2008; and Council of the European Union (note 3).

actions”.⁴³ It mentioned that the threat to Europe from WMD proliferation had grown since 2003, especially that of CBRN terrorism. New Lines offered little in terms of new initiatives or a change in the EU’s policy approach. Instead, it was mainly intended to raise awareness within member states of the growing WMD proliferation challenge, calling on government, scientific and academic circles to be better informed on non-proliferation matters and the potential risks of their own activities. One of the main changes was the request to SitCen to draft a document for evaluating trends, risks and threats regarding proliferation. This document was expected to better target and calibrate EU non-proliferation policies and also to focus the EU’ s geographical priorities regarding cooperation with third countries. Although New Lines offered itself as a modest update to the WMD Strategy, it was regarded as a call for more coherence and effectiveness of an EU WMD Strategy that had not (yet) delivered on its promises.⁴⁴

New Lines “completes” the alarmist language climax started with the ESS; in fact, the document suggested that the rise of private and illegal networks contributed to dissemination of dual-use technologies, adding to the WMD threat to EU citizens, and frequently mentioned the importance of “raising the awareness” fifteen times in twenty-five pages.⁴⁵

POLICY IMPLEMENTATION

From an analytical perspective, EU’s action in WMD non-proliferation matters can be broadly categorized in two main types. First, efforts aimed at strengthening existing regimes whose setting are generally multilateral fora. Second, approaches to regional proliferation issues which are implemented outside these frameworks.⁴⁶ On this purpose, Grip talks about the central policy of the EU WMD non-proliferation policy, known as “effective multilateralism”, as twofold since the EU not only supports and works with multilateral non-proliferation regimes, but also assists non-EU countries to implement their commitments under the international non-proliferation regimes to which they are party⁴⁷ or as it has been defined by other authors, “enforceable multilateralism”⁴⁸.

⁴³ Council of the European Union, Council Conclusions and New Lines for Action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems, 17172/08, Brussels, 17 Dec. 2008, p.6.

⁴⁴ Van Ham , P., 2011, p.5.

⁴⁵ Ibid., p.19.

⁴⁶ Portela, C., 2003, p.5.

⁴⁷ Grip, L., 2012.

⁴⁸ Biscop, S., and Drieskens, E., 2006.

Effective multilateralism is a policy of multilateral treaty-based governance of non-proliferation.⁴⁹ Since 1993 the EU has had legal instruments at its disposal to implement its foreign and security policy in support of multilateral instruments and uses the CFSP budget to fund these policy instruments.

2.1 EU support to existing international regimes

The EU has developed a series of initiatives in support of the NPT, the Additional Protocol, the CWC, the BWC, the CTBT, the UN Programme of Action on Small Arms, the Hague Code of Conduct (HCOC), and the Ottawa Convention. These Joint Actions and Council Decisions imply both political support to the multilateral instruments and financial support to the international agencies in charge of verification. The majority of the Council decisions allocate funding from the CFSP budget to support multilateral treaties and bodies, such as the United Nations Security Council Resolution 1540's Secretariat, IAEA, the Organization for the Prohibition of Chemical Weapons (OPCW) and the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). Since December 1999, the Council adopted 20 Joint Actions and since December 2008, 10 Council Decisions⁵⁰ concerning mainly European Union CFSP funding to selected non-proliferation regimes⁵¹. Some decisions introduced new legislation at the EU level, such as the enhanced EU regulation on the control of exports, transfer, brokering and transit of dual-use items, while other Decisions have introduced restrictive measures against individual states.⁵² The objectives are the promotion of universality, the promotion of full compliance with the obligations under these treaties and generally enhancing the credibility of the multilateral regime. Through these Joint Actions and Council Decisions, the EU has made a considerable contribution to preventing proliferation, by expanding the implementation of international norms, securing sensitive materials and facilities, enhancing national capabilities in the area of border controls against illicit

⁵⁰ European External action Service (EEAS), Six-monthly progress report on the implementation of the EU strategy against the Proliferation of Weapons of Mass Destruction 2012/II. *Official Journal of the European Union*, C37/3, 9 February 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:037:0003:0026:EN:PDF>

⁵² Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast), *Official Journal of the European Union*, L134, 29 May 2009; Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, *Official Journal of the European Union*, L195, 27 Sep. 2010.

trafficking and re-directing former WMD scientists to peaceful activities. Concerning the second component of the EU strategy, it mainly consist in assisting third countries to implement their commitments under the international non-proliferation regimes to which they are party and for this purpose, the EU disposes of several instruments.

2.2 The WMD Clause

Considering the economic and financial weight of the EU and, above all, its global-reach trade power, the EU disposes of a considerable bargaining power with third countries. This relative advantage has been used by the EU by applying a conditionality ratio in its relationships with third countries. In November 2003 the EU adopted a *policy regarding the management of non-proliferation in the context of its relationships with third countries*. Language for a “non-proliferation clause” (WMD clause) was agreed and was to be included in all of the EU’ s future mixed agreements with third countries. As Grip explains, “Mixed agreements are agreements between the EU and a third country that include a combination of economic and political elements. They cover both matters that fall under the Community area of EU competence and political matters that fall under other areas of EU competence, such as security and defence. By inserting the WMD clause in mixed agreements it is theoretically possible to make trade, development assistance and other elements of cooperation that are under Community competence directly conditional on fulfilment of commitments in the area of non-proliferation, which is under CFSP competence. Unlike Community-only agreements, which can be adopted by the Council (usually by qualified majority vote), mixed agreements require a consensus vote in the Council and must also be signed and ratified by all EU Member States before they enter into force, because of their political content”.⁵³ The WMD clause was introduced under the technocratic term “mainstreaming” which referred to the established practise of making trade, development assistance and other elements of cooperation directly conditional to the fulfilment of certain commitments and obligations, in this case in the area of non-proliferation.⁵⁴ This clause contains an engagement to cooperate and strengthen the fight against the proliferation of WMD and their vehicles through the ratification of the main related international treaties and agreements and through the establishment of efficient export-control system which has to include a control system over transit

⁵³ Grip, L., 2009, p.3.

⁵⁴ Van Ham, P., 2011.

operations and a deterrent sanctions regime. Since 2003, this clause has been inserted in all the new agreements, as well as in the renewal of CFSP agreements under art. 24 TEU negotiated with third countries, covering now almost 100 countries⁵⁵ and its contribution to the non-proliferation of WMD seems to be determinant.⁵⁶ The “conditionality ratio” is not new to the EU; this policy of mainstreaming uses the same conditionality that the EU has used in relation to promoting human rights and democracy in third countries. Criticisms surrounding this kind of strategy are likely in the HRs and democracy promotion policy as well as in the WMD non-proliferation policy. Although effective mainstreaming is considered fundamental for the EU to actively defend its values and interests by making trade and aid contingent upon “good behaviour” of third parties (and this is particularly stressed in the 2008 NLA), the WMD clauses have been preliminarily agreed but not signed with, for example, China, Libya, South Korea and several Central American states, while some progress has been achieved in negotiations with Russia, Singapore, Thailand, the Philippines and Viet Nam.⁵⁷ Only two mixed agreements that incorporate the WMD clause have actually entered into force and neither of them will have a significant impact since they involve poor countries without WMD capabilities and aspirations.⁵⁸ In relations with countries where a WMD clause could have a real impact, negotiators from both sides have avoided framing the bilateral cooperation as “mixed agreements”. For the past four years, the EU and India have been in negotiations for a far-reaching free trade agreement (FTA), but it was decided early on that the FTA would not be tied to any political conditionality.⁵⁹ Since the EU is likely to accept India’s intransigence, this will further undermine the credibility of mainstreaming CFSP matters within the EU and abroad.⁶⁰ The same situation is visible in the HRs and democracy promotion policy. The gap between facts and rhetoric makes the EU appear as an irrational actor since its criteria of selection are far to be understandable and identifiable. Brummer, analyzes the EU’s inconsistency through some dataset such as *Freedom House 2008* (political

⁵⁵ Council of the European Union, *The EU WMD clause in agreements with third countries: Five years of implementation (2003-2008)*, Brussels, 19 January 2009.

⁵⁶ Michel, Q., 2012.

⁵⁷ Council of the European Union, Annual Report from the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament on the Main Aspects and Basic Choices of the CFSP, 2009 (European Union: Brussels, June 2010), p. 7.

⁵⁸ These agreements are with Albania and the revised Cotonou Agreement with most of the African, Caribbean and Pacific Group of States.

⁵⁹ Grip, L., 2009.

⁶⁰ Van Ham, P., 2011, p.7.

and civil liberties), *Bertelsmann Transformation Index* (status and management index), *UCDP/PRIO Armed Conflict dataset 2006* (war and minor conflicts) and *IIK Conflict Barometer 2008* (war and severe crisis) and highlights the EU's not so value-driven approach since not all the countries that violated the CFSP's objectives (as set out in Article 11 TEU), have been sanctioned and quite often the targeted states are weak, authoritarian and/or politically isolated such as Belarus, Moldova, Myanmar and Zimbabwe. However, it is important to stress the intergovernmental set-up of the CFSP which can be (and it is) translated as fragmentation of the EU's foreign policy as long as its Member States will pursue their own interests. An example can be the attempts of the German Chancellor Schröder and the French President Chirac, in 2005, to end the arms embargo against China upon which had been imposed Autonomous European sanctions in 1989 because of the Tienanmen issue, but the request was not motivated on the basis of a Chinese improvement with respect to political and civil liberties but because of some Member States' interest in the trade of arms (economic and strategic aims).⁶¹ Neither the negative conditionality has been an efficient democracy promotion instrument because of the use that the UE made of it. Europe has shown too much indulgence or inactivity towards authoritarian governments like towards the election of the Tunisian President Ben Ali in October 2004 or towards Libya, where punitive measures were used in response to its engagement in terrorist and WMD related activities. The "prize" for Libya has been an offer of a new trade and cooperation agreement from the EU despite there had been no manifest changes with respect to the country's political and human rights record.⁶² Similar criticisms and difficulties can be traced within the application and implementation of the WMD clause. Considering the text of the WMD clause in the November policy note was:

"The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to co-operate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The parties agree that this provision constitutes an essential element of this agreement. The parties furthermore agree to cooperate

⁶¹ Brummer, K., 2009.

⁶² Amirah-Fernandez, H. and Menendez, I., 2009.

and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:

- taking steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments;
- the establishment of an effective system of national export controls, controlling the export as well as transit of WMD related of goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls.

The Parties agree to establish a regular political dialogue that will accompany and consolidate these elements. These two elements might be considered as essential elements on a case by case basis”.⁶³

The WMD clause presents several shortcomings. First of all, it can be included only in mixed agreements and not in Community-only agreements because of its political content, or as it is stated in the official document “for reasons linked to the Community’s competences under the TEC”⁶⁴. However, “where there exist Community-only agreements of a general nature, and where neither a flanking mixed agreement exists nor is envisaged, the Council will *consider* (personal italics) the principle of introducing an essential non-proliferation *element* in the EU-third country relationship through the conclusion of a *parallel instrument* establishing a link with the EC agreement. This parallel instrument would contain a provision along the lines of the text attached”⁶⁵.

The fact of limiting the introduction of the WMD clause only in mixed agreements and not in Community-only agreements creates an obstacle to the possibilities of global and effective application of the clause, since political and economic considerations take over WMD proliferation concerns. In fact, as already explained, the procedure for the conclusion of agreements with third countries is not the same for the two types of agreements, with the voting procedure for mixed agreements being susceptible to be victim of “political blockage” due to the veto power of each member state. This state of facts is evident also by the language used in the Council note which highlights a certain caution in the imposition of the WMD clause toward all countries.

In fact, the Council note, by stating that “the Council will consider” the possibility of this inclusion means that the Council has the right to not include the clause in

⁶³ Council of the European Union, “Fight against the proliferation of weapons of mass destruction: mainstreaming non-proliferation policies into the EU’s wider relations with third countries”, Council Note, 14997/03, 19 Nov. 2003, p.4, <http://ue.eu.int/uedocs/cmsUpload/st14997.en03.pdf>.

⁶⁴ Ibid. p.3.

⁶⁵ Ibid.

a considered agreement and it does not have to justify its choice. However, this uncomfortable situation, could be avoided by the Council by introducing some kind of conditionality but, in this case, from the analysis of the language implied, it is very possible that the formula of the WMD clause could be different from the “standard” one, in fact not by chance, the Council note uses the term “element” instead of “clause”. To sum up, not only the WMD clause is susceptible to not being imposed to all third countries, but it can also suffer of “variable geometry” in the drafting of its formula, by eliminating some inconvenient (see effective) restrictions for third countries in their commitment to WMD non-proliferation.

The Council note is even more cautious by stating that, in case the WMD is included in a mixed agreement with a third country, but the third country does not respect its commitments and therefore in case of non-compliance, the suspension of the agreement is considered only as “last resort”, while “intensive consultations between the parties would take place (...)”.

Concerns about the implementation and the effectiveness of the WMD clause have been expressed, in 2007, by Gerrard Quille, a policy adviser to the European Parliament who identified several obstacles to the implementation of the WMD clause since 2003 and raised some important questions, such as how to decide what forms the clause should take in agreements with different third countries and how to deal with resistance to the clause from countries of proliferation concern.⁶⁶

The Council’s WMD strategy progress reports is, therefore, too optimistic when stating that the EU has concluded negotiations with almost 100 countries for agreements that include a clause “compatible with the spirit and the content of the WMD standard clause”⁶⁷. From Grip’s analysis, in fact, it is evident that “only two mixed agreements that incorporate the clause have so far entered into force. The clause’s inclusion has reportedly met resistance from third countries in most negotiations. Both of the agreements in force and most of the current draft agreements and signed agreements not yet in force include both sections of the

⁶⁶ Quille, G., ‘EU non-proliferation clauses applied to certain agreements in the EU’s wider relations with third countries’, European Parliament Note, DGEExPo/B/PolDep/Note/2007_172, 21 Sep. 2007, <http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/sede011007exponote_e_/sede011007exponote_en.pdf>; and Council of the European Union, 15708/03 (note 13), pp.8,10–11. (In Grip’s paper, Novembre 2009).

⁶⁷ Council of the European Union, Six-monthly progress report on the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction (2009/I), 11490/09, 26 June 2009, p.36.

WMD clause, but with only the fulfilment of existing obligations - in the first part - given essential element status".⁶⁸

2.3 Dual-use export control regime

A key-element of EU WMD non-proliferation policy is the EU specific export controls regime concerning dual-use items.⁶⁹ The EU WMD Strategy highlights the importance of strengthening export control policies and practises concerning dual-use items, which can be used for both civil and military purposes. The export control of these items is governed by Council Regulation No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as this concerns trade and is therefore within the Union competence. This Regulation is legally binding and directly applicable in EU Member States. However, MSs are involved as items listed in the Regulation cannot leave the EU territory without an export licence granted by the competent authorities of the Member State that need to implement the Regulation. The EU list of controlled items is based on control lists adopted by the international export control regimes: the Australia Group (AG), the Nuclear Suppliers Group (NSG), the Wassenaar Arrangement (WA) and the Missile Technology Control Regime (MTCR). The fact that some EU Member States against their will remain outside of some regimes (third countries block their admittance requests) creates a loophole in the EU's ability to implement controls effectively. The 2011 Management Plan for DG TRADE identified dual-use export controls as a specific area of focus, citing the number of available EU General Export Authorizations for dual-use items as one indicator for an effective EU export control system. Based on this indicator, DG TRADE set a mid-term target to July 2011 to increase the availability of the general licences by third countries from the current seven beneficiaries.⁷⁰ General licences are exceptions to the

68 Grip, L., 2009, p. 6.

69 Dual use goods are products and technologies normally used for civilian purposes but which may have military applications. The EU export control regime is governed by Regulation 428/2009. The list of controlled dual-use items is set out in Annex I to Regulation 428/2009. Items not listed in Annex I may also be subject to export controls under certain conditions specified in the Regulation. Under the EU regime, controlled items may not leave the EU customs territory without an export authorisation. Additional restrictions are also in place concerning the provision of brokering services with regard to dual-use items and concerning the transit of such items through the EU.

See European Commission <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>

⁷⁰ The beneficiaries are Australia, Canada, Japan, New Zealand, Norway, Switzerland and USA. European Union, European Commission, 'DG TRADE Management Plan

standard individual licences issued for export of sensitive products and their increase spread have natural proliferation concerns. DG TRADE' s Dual-Use Unit is responsible for the internal side of export controls as part of the EU Common Commercial Policy by ensuring the proper functioning of the export control system and that the system increases harmonization between EU exporters. However, an effective implementation of such a policy is not an easy task for several reasons.

1) Vague or lacking legislation: the NLA's recommendations regarding punitive action for proliferation-related acts were followed up with very little action at the EU level. There are currently no international legal standards regarding penalties for export control or proliferation-related offences.

Some “unclear” requirements can be derived from United Nations Security Council resolutions and from the international treaties regarding biological, chemical and nuclear weapons. None of the four export control regimes currently provide guidance on penalties and prosecutions.⁷¹

The 1968 Non-Proliferation Treaty does not make reference to enforcement or penalties.⁷² UN Security Council Resolution 1540 declares that the proliferation of WMD and their means of delivery are a threat to international peace and security.⁷³ The resolution aims to prevent non state actors from accessing WMD and to counter proliferation more broadly. The resolution obliges all UN member states to exercise effective export controls over such weapons and related materials. More specifically, it obliges member states to “establish, develop, review and maintain appropriate effective national export and trans-shipment controls” over nuclear, biological and chemical weapons and their means of delivery, and related items. This explicitly includes “appropriate laws and

2011’, 20 Jan. 2011, p. 21. On licenses see <<http://www.ec.europa.eu/trade/creating-opportunities/trade-topics/dual-use/>>.

⁷¹ The Nuclear Suppliers Group was established in 1975. In 1992 it published guidelines for the transfer of nuclear-related dual-use items. The Australia Group, founded in 1985, seeks to harmonize and enhance export controls to ensure exports do not contribute to the development of biological or chemical weapons. The Missile Technology Control Regime, founded in 1987, coordinates national licensing and enforcement efforts to prevent the proliferation of missile technologies. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established in 1996.

⁷² Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature 1 July 1968; entered into force 5 Mar. 1970.

⁷³ UN Security Council Resolution 1540, 28 Apr. 2004. This and other UN Security Council resolutions can be accessed at <<http://www.un.org/en/sc/documents/resolutions/index.shtml>>.

regulations” and “establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations”. Individual Member States determine the ways in which they will implement these obligations.

UN sanctions on the transfer of dual-use items to the Democratic People’s Republic of North Korea (DPRK, North Korea), Iran and Syria do not include any requirements or even guidance on penalties.

2) There are several differences among Member States: the legal framework for prosecuting WMD-related dual-use offences in the EU is a combination of EU and national laws. The EU Dual-use Regulation (it is therefore directly applicable across the EU) includes the control list of dual-use items for which a licence is required for export and, in certain limited cases, brokering and transit.⁷⁴ 18 EU Member States are responsible for implementing and enforcing these provisions. Licensing and product classification decisions remain within national competence, as does their enforcement.

In addition to the EU Dual-use Regulation, Member States can adopt stricter national provisions such as additional control list items on public security or human rights grounds (Article 8), or stricter wording of the catch-all end-use control mechanism for unlisted items (Article 4(5)). The catch-all mechanism allows the competent EU Member State authorities to impose an authorization requirement if items are or may be intended for a WMD end-use, or in relation to a listed conventional military item in a destination subject to an embargo. If exporters are aware of such an end-use, they are obliged to inform the competent authorities.

EU Member States have the option to add a stricter national provision, extending this information requirement to a situation where the exporter has reason to believe that there is a WMD end-use. This has implications for potential offences.

⁷⁴ EU Regulation 428/2009 regulating the export, brokering and transit of dual-use items, including software and technology, entered into force on 27 Aug. 2009. The law substantially expanded the scope of dual-use trade activities subject to control, in line with the requirements of UN Security Council Resolution 1540 regarding brokering, transit and trans-shipment controls. Council Regulation (EC) no. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, Official Journal of the European Union, L134, 29 May 2009. This regulation updates and expands previous EU-wide control provisions for dual-use items, which go back as far as 1995. Anthony, I. et al., ‘Multilateral weaponrelated export control measures’, SIPRI Yearbook 1995: Armaments, Disarmament and International Security (Oxford University Press: Oxford, 1995), pp. 616–19. (In Sibille Bauer’s paper, July 2013).

The use of such clauses thus reinforces differences between the penal laws of Member States. Penal law has remained within national EU Member State competence across all issue areas. Article 24 of the EU Dual-use Regulation requires MSs to “take appropriate measures to ensure proper enforcement of all the provisions of this Regulation” and to “lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation”. Article 24 also provides that penalties for breaches of the regulation be effective, proportionate and dissuasive. However, the translation of this provision into the national penalty systems differs considerably across the EU and this creates challenges that arise from translating the EU Dual-use Regulation and embargo provisions, into different languages and legal terminologies and legal traditions.

3) It is a political and politicized issue: the design, implementation and enforcement of export control legislation is in itself political, insofar as it is shaped and informed by political assessments and priorities. WMD-related cases in particular may be political and politicized. The media may be very interested in cases, thus increasing pressure to deliver results, and may possibly indirectly influence the process in one way or another. Prosecutors and intelligence services may also have conflicting interests. On the one hand, prosecutors may seek to prosecute suspected legal breaches, which requires gathering all available evidence in order to prosecute all of those involved. On the other hand, intelligence services may have an interest in protecting their sources and might prefer to monitor and disrupt transactions rather than prosecute them.

4) A never-ending WMD evolution concept: the term “export controls” has commonly been used to describe the control of security-related items leaving the host country. However, the term “trade controls” more accurately reflects reality as it relates to, among other things, controls on brokering, transit, trans-shipment, financial flows, technology transfer (especially by electronic means) and technical assistance (e.g. manual services and the oral transfer of know-how), all of which create new demands and challenges from both a legal and practical enforcement perspective. Consequently, the focus of non-proliferation efforts has partially shifted from the physical movement of goods to the analysis of which elements of a transaction are relevant to, and should be subject to, controls.⁷⁵

In the light of these evolving threats, shifting security and foreign policy considerations and rapid scientific and technological developments, the EU

⁷⁵ Bauer, S., 2013.

export control policy can play a central role for economic growth and security concerns and this is why it needs to keep pace. The “2013 Strategic Export Control Conference”, organised jointly by the European Commission and the Irish Presidency and which brought together 260 representatives of key industry associations and major companies, civil society and academia, Member States’ authorities and European Institutions and which took place in Brussels on 26 June 2013, aimed at providing a forum to discuss topical export control issues and options for adjusting the EU export control system (among which a review of the underlying principles and notions of export controls in light of broader policy, human rights and security considerations relating to the use of telecommunication and cyber-tools in violation of human rights) to rapidly changing technological, economic and political circumstances.⁷⁶

The involvement of industry associations is a key-element of the general framing of EU fight against WMD proliferation. In fact, much of the revision of States’ national trade control regimes, in the last ten years, was aiming at reconsider the proliferation responsibility of non-State actors, not only in terms of terrorist groups, but also of industrial operators as additional (to national authorities) and necessary guarantors of an efficient fight against the proliferation of WMD.⁷⁷ It is worth to consider that dual use items are a key-element for the competitiveness, at the global level, of several EU companies in the aerospace, defence and security sectors,⁷⁸ therefore a full and deep understanding on the importance of an efficient export controls regime on the side of industrial operators is essential to avoid that economic considerations take over security priorities.

The centrality of export controls in preventing the proliferation of WMD and the actuality of this threat, has been highlighted also by the European Commissioner for Trade, Karel De Gucht during the 2013 Strategic Export Control Conference which took place in Brussels on 26 June 2013.⁷⁹

⁷⁶ European Commission and Irish Presidency of the Council of the European Union, 2013 Strategic Export Control Conference “Towards an export control policy review: ensuring security and competitiveness in a changing world”. 26 June 2013, Brussels. Report: 2013 Strategic Export Control Conference: http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151594.pdf.

⁷⁷ Michel, Q., (ed.), 2011.

⁷⁸ European Commission, (note 1).

⁷⁹ Europa – Press Releases – Speech: Unity in Diversity: finding the right balance between uniformity and fragmentation. Reference: Speech/13/576, Event Date: 26/06/2013. 2013 Strategic Export Control Conference/ Brussels: http://europa.eu/rapid/press-release_SPEECH-13-576_en.htm

2.4 CBRN counter-proliferation security research projects

In 2006 the EU introduced a framework for security research at the EU level, with a budget of €1.4 billion for the years 2007–13, as part of the Seventh Framework Programme for Research (FP7).⁸⁰ FP7 Security research builds on transnational collaborative projects and networks, which apply public funding to research conducted by industry. Many of the projects include partners outside the EU (e.g. Israel) and projects often aim to develop products that can be sold to end-users or integrated into other programmes. By mid-2011 FP7 Security had funded 25 projects on CBRN issues with over €100 million in FP7 financing and the Commission estimates that CBRN research will fund closer to 60 projects on CBRN issues with a total budget of €250 million under the 2007–13 budget period. The FP7 Security CBRN research structure is separate from the EU WMD Strategy framework. A CBRN research programme was not envisioned in the WMD Strategy, nor in New Lines for Action.⁸¹ The DG for Enterprise and Industry (DG ENTR), in this sense, is active through several security research projects in the field of CBRN counter-proliferation. Recently, the EU's efforts to promote consistent chemical, biological, radioactive and nuclear counter-proliferation R&D both within and beyond the EU was the focus of diverse views of a recent Security Research workshop in Brussels. Discussion among its research participants was especially lively when considering how to fill the EU's future "external" CBRN research gaps with partner countries. The topic's complexity was debated during a 25 April roundtable entitled, "The External Dimension of Security: EU Science and Technology". The event was organised by the Security Research project known as ARCHIMEDES⁸², a 36-months project launched in January 2012, with a budget of EUR 1.54 million, of which the EU contributed 88% (EUR 1.35 million)⁸³.

⁸⁰ European Commission/ CORDIS: <http://cordis.europa.eu/fp7/security/>.

⁸¹ Ian, A., and Grip, L., 2013.

⁸² ARCHIMEDES is a project funded by the European Union under its 7th Framework Programme (FP7) and coordinated by EOS. Its mission is to increase the R&T uptake in Europe by focusing on end-users & operators' needs and involvement in the innovation cycle. To do that it aims at promoting a sustainable public – private dialogue between the demand and the supply side, and at making European research activities more end-user friendly. This should allow for a better identification of end-users & operators' capability gaps and common operational needs, and facilitate end-users & operators' participation in security Research & Innovation programmes. (European Organisation for Security –EOS, <http://www.eos-eu.com/?Page=archimedes&tID=2>).

⁸³ European Commission, DG Enterprise and Industry, http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=6643&lang=en.

2.5 External assistance and cooperation programmes and financial instruments

EU' s approach to WMD non-proliferation is framed in several policy areas and this is in line with the EU's concept of security which is considered to be strictly dependent on development. For the period 2007-2013, the EU's development action in the field of security and conflict is financed through two types of instruments:

- the implementation of the policy at national and regional level is supported by geographical instruments, such as the European Development Fund (in the ACP countries), the Development Co-operation Instrument (in Latin America, Asia and South Africa), and the European Neighbourhood & Partnership Instrument (in the neighbouring regions);
- the Instrument for Stability (IFS), which has two components: a short-term component concerning crisis response and preparedness, and a long-term component in the context of stable conditions.⁸⁴

Differently from the WMD clause instrument, the Commission has more power in the management of the external assistance and cooperation projects on WMD non-proliferation, another instrument to implement EU WMD non-proliferation policy. This is particularly true after a reform of the Commission budget instruments, in 2007 which created the Instrument for Nuclear Safety Cooperation (INSC), as a successor to the TACIS nuclear safety programme and the new IFS⁸⁵ to "undertake development cooperation measures, as well as financial, economic and technical cooperation measures with third countries" in a way that was complementary to the CFSP-financed activities due to their long-term components. Differently from TACIS which was focused on a specific geographical area, the IFS and the INSC were global in their scope of funding. This gave EU external assistance the option of moving away from an exclusive focus on the former Soviet Union to areas of emerging concern, such as countries with new nuclear power ambitions or regions with assessed proliferation risks due to, for example, terrorism. The WMD Strategy and the NLA were central in setting these new priorities for EU assistance, which in 2007 was renamed as "cooperation measures".⁸⁶

⁸⁴ European Commission/Development and Cooperation- EuropeAid, http://ec.europa.eu/europeaid/what/security-conflict/index_en.htm.

⁸⁵ Regulation (EC) No. 1717/2006 of the Parliament and of the Council of 12 November 2006 establishing an Instrument for Stability.

⁸⁶ Grip, L., 2011.

The two main frameworks in which the EU has committed this assistance are the G8 Global Partnership⁸⁷ and the CBRN risk mitigation programmes financed under the EU's seventh financial perspective 2007–13 (EU multi-annual financial frameworks⁸⁸).

EU assistance programmes are governed by the rules set out in the Regulations of the EU financial instruments that support them.

The IFS is primarily intended (under Article 3) to allow a prompt response to situations of crisis or emerging crisis. Around 75% of the budget allocated for the IFS for the years 2007–2013 is designated for this purpose.⁸⁹ The remaining 25% is intended for providing assistance in the context of stable conditions for cooperation, including “risk mitigation and preparedness relating to chemical, biological, radiological and nuclear materials or agents.”⁹⁰ Even though the “non-proliferation” element was played down in the final regulation as compared to the original Commission’s proposal⁹¹, the IFS, following the expiration of TACIS in 2006, emerged as “the sole Community instrument⁹² that can directly address

⁸⁷ In June 2002 at the World Economic Summit in Kananaskis (Canada), the G8 heads of state decided on a G8 Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction intended to provide the means for a more effective control over chemical, biological, radiological and nuclear weapons and materials, initially in Russia, and in particular to prevent terrorists from acquiring them. The G8 leaders defined in Kananaskis the following as “priority concerns”: the destruction of chemical weapons; the dismantlement of decommissioned nuclear submarines; the disposal of fissile materials; finding alternative employment for former weapons scientists. Today the Global Partnership includes the G8, the European Union and a total of 13 other donor States (Finland, Norway, Poland, Sweden, Switzerland, the Netherlands, Australia, Belgium, the Czech Republic, Denmark, Ireland, New Zealand and the Republic of Korea). Russia has been joined as a recipient by Ukraine. (European External Action Service -EEAS- http://eeas.europa.eu/non-proliferation-and-disarmament/g8-global-partnership/index_en.htm).

⁸⁸ The multiannual financial framework (MFF, formerly “financial perspectives”) is a spending plan that translates the EU priorities into financial terms. It is not a seven-year budget, but the basis for the annual budgetary exercise; it limits expenditure over a fixed period and defines the maximum amounts available for each major category of spending. It therefore provides a political as well as budgetary framework for focusing resources and investments where needed. (Europa.eu, <http://europa.eu/newsroom/highlights/multiannual-financial-framework-2014-2020/>).

⁸⁹ IFS, (note 146), 10.

⁹⁰ IFS, (note 146), 4.

⁹¹ In its original proposal, in 2004, the Commission suggested that this new instrument of the European Community should enable providing assistance for the following purposes: 1) responding to conflicts and threats to human rights, democracy and the rule of law; 2) furthering cooperation between the EU and third countries with regard to trans-border security challenges; and 3) preventing the proliferation of WMDs.

⁹² Several financial instruments are used to fund the EU’s CBRN risk mitigation programmes. However, while all of the instruments are part of the common EU budget, a distinction can be made between the Common Foreign and Security Policy (CFSP)

issues relating to the risks presented by the weaponisation of chemical, biological, radiological and nuclear agents”.⁹³

The aid provided must take into account the actions led by the other European instruments for external assistance. The implementation of the fund is based on geographical and thematic strategy documents, and on the multi-annual indicative programmes for each country. Special measures may also be adopted in response to exceptional crises or situations.

The main implementer of external EU non-proliferation assistance projects is the DG for EuropeAid Development and Cooperation (DG DEVCO), which formally began its work in January 2011. DEVCO is responsible for drafting the thematic and geographical Annual Action Programmes and implementing their associated policies. DEVCO further provides technical and legal assistance and training to implement UN Security Council Resolution 1540, for example, through the Border Management Programme in Central Asia (BOMCA) on the region’s borders with China, Pakistan, Afghanistan and Iran. BOMCA, which is implemented by the UN Development Programme, is one of the largest Commission assistance programmes in Central Asia.⁹⁴

DEVCO and the EEAS prepare proposals under the Development Cooperation Instrument (DCI) and the European Development Fund (EDF).⁹⁵ The EDF is outside of the Union budget and, therefore, not under the scrutiny of the European Parliament. It is, however, still managed by DG DEVCO. Concerning DCI, as one of the new instruments launched in January 2007, it supports cooperation with 47 developing countries in Latin America, Asia and Central Asia, the Gulf region (Iran, Iraq and Yemen) and South Africa. DCI has been used to fund EU assistance projects in third countries in the field of biosafety and biosecurity.⁹⁶ Within the DCI framework, WMD non-proliferation has been included as a topic in bilateral dialogue between EU and India and Pakistan.⁹⁷

budget established to provide short-term assistance and the European Commission’s budget instruments used for long-term responses to global security threats.

⁹³ Commission, “The Instrument for Stability: Strategy Paper 2007–2011”, European Commission:

http://ec.europa.eu/europeaid/how/finance/documents/eidhr/ifs_strategy_2007-2011_en.pdf.

⁹⁴ Border Management Programme in Central Asia website, <<http://bomca.eu/>>.

⁹⁶ “EU cooperative initiatives to improve bio-safety and bio-security (2010)”, Statement by Belgium on behalf of the European Union, Biological and Toxin Weapons Convention 2010 Meeting of Experts, 23 Aug. 2010, p. 5; and Council of the European Union, Six-monthly Progress Report on the implementation of the EU Strategy against the

When drafting administrative expenditure estimates for the EEAS, the HR holds consultations with the DEVCO Commissioner regarding the commissioner's responsibilities.⁹⁸

The regional directorates within DEVCO fund assistance to third countries with the Union external budget instruments. For example, the Nuclear Safety Unit, placed under DEVCO's Europe, Southern Mediterranean, Middle East and Neighbourhood Policy Directorate manages nuclear safety assistance, which includes safeguards projects in Eastern Europe (e.g. Russia and Armenia) and which are funded by the INSC and CBRN risk mitigation, which is funded by the long-term component of the IFS. The unit is responsible for the CBRN regional centres of excellence in the Middle East and any future centre in the regions under its mandate.

The instrument for nuclear safety co-operation (INSC 2007-2013) came into force in 2007. Its main objectives are the promotion of a high level of nuclear safety, radiation protection and the application of efficient safeguards of nuclear material in non-EU countries worldwide. It substantially extended its geographical coverage in 2011.⁹⁹ The INSC is supported by the Regulatory Assistance Management Group (RAMG), which brings together EU regulatory bodies, including members of the European Nuclear Safety Regulators Group (ENSREG), to assist the Commission in defining regulatory components of the nuclear and radiation safety needs of potential beneficiary countries.¹⁰⁰

Under the DG DEVCO' mandate falls the CBRN Centre of Excellence whose main purpose is to assist countries in building institutional capacity and in implementing a coherent and coordinated strategy for CBRN risk mitigation, as

Proliferation of Weapons of Mass Destruction (2010/I), 11135/10, Brussels, 14 June 2010, p. 35.

⁹⁷ Council of the European Union, *2009 Annual report from the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament on the Main Aspects and Basic Choices of the CFSP* (Council of the European Union: Brussels, June 2010), pp.51-52.

⁹⁸ Note 40, p.36, article 8.3.

⁹⁹ European Commission, *Annual Report 2012 on the European Union's Development and external assistance policies and their implementation in 2011*: http://ec.europa.eu/europeaid/multimedia/publications/documents/annual-reports/europeaid_annual_report_2012_full_en.pdf.

¹⁰⁰ Grip, L., 2011.

required by their international commitments, while developing coherent national assistance packages tailored to a regional context.¹⁰¹

2.6 The enlargement policy

Another way through which the EU contribute to increase and strengthen global compliance to WMD non-proliferation regimes is through enlargement. DG for Enlargement (DG ENLARG) manages the Instrument for Pre-accession Assistance (IPA), which aims to help candidate and potential candidate countries for EU accession to implement the domestic reforms needed to fulfil EU requirements for integration. The IPA has funded some projects related to nuclear safety and security, such as repatriating irradiated fuel elements from the Vinca nuclear research reactor in Serbia to the Russian Federation. The IPA is the only geographic financial instrument in the external relations field not managed by the EEAS.¹⁰²

The DG ENLARG play a role in implementing the reform-focused goals of the EU's non-proliferation strategy regarding, among other things, setting up (or maintaining) effective export control systems in neighbouring countries. On this purpose, Turkey and the Former Yugoslav Republic of Macedonia are required to apply the EU regime. Croatia, as became the 28th Member State of the EU on 1 July 2013, Regulation 428/2009 and its amending regulations are fully applicable to Croatia as of 1 July. Therefore, dual-use items may be traded freely within the EU, including Croatia and a license to export dual use items from one of the other 27 Member States to Croatia is no longer required, with the exception of those items listed in Annex IV to Regulation 428/2009 for which a licence is required even for transfers within the EU.¹⁰³

¹⁰¹ CBRN regional Centres of Excellence have been established by the Commission in the Middle East, South East Asia, Ukraine and the South Caucasus in cooperation with the UN Interregional Crime and Justice Research Institute (UNICRI) and regional organizations, including the League of Arab States and the Association of Southeast Asian Nations. CBRN Centres in other regions—including Central Asia, the Mediterranean basin region and Africa—will follow. (See Grip, L., 2011).

¹⁰² Council of the European Union, (note 43).

¹⁰³ European Commission, Notice – Export control regulation and Croatia's EU membership, 3 July 2013:

http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151592.pdf.

2.7 The “internal” dimension of the WMD Non-proliferation Strategy. Home Affairs policy

Being a concern of international security, the proliferation of WMD had and has internal implications and it is therefore dealt as an internal security matter, a policy area whose competence is divided between EU institutions and Member States, under Title VI of the Lisbon Treaty.

Through the Crisis Management and Fight Against Terrorism Unit, DG HOME¹⁰⁴ is responsible for assisting the authorities of the Member States in their implementation of the EU strategy to combat terrorism. The European Union Counter-Terrorism Strategy adopted in November 2005, makes a direct link between terrorism and proliferation (as already the ESS in 2003) and provides objectives to cut off terrorists’ access to attack materials, specifically WMD, delivery systems and dual-use products while depriving terrorists of the opportunities to “spread technical expertise related to terrorism”, thus addressing intangible knowledge transfers related to WMD proliferation.¹⁰⁵ Internationally, the strategy identified that the EU “must work with partners and international organizations on transport security, and non-proliferation of CBRN materials and small arms/ light weapons, as well as provide technical assistance on protective security to priority third countries as a component of our wider technical assistance programmes”.¹⁰⁶

DG HOME’s Crisis Management and Fight Against Terrorism Unit is also responsible for the implementation of the EU CBRN Action Plan, adopted by the

¹⁰⁴ The DG for Justice, Freedom and Security (DG JFS) was divided into two directorate-generals in July 2010: DG Home Affairs (DG HOME) and DG Justice, Fundamental Rights and Citizenship (DG JUST). Prior to its division, DG JFS had completed policy work on several areas related to non-proliferation, including a Green Paper on biopreparedness in 2007 and support to an initiative to develop international biosafety and biosecurity laboratory standards. The division of JFS saw the department for international affairs move to DG HOME. (See Grip, L., 2009, p.13).

¹⁰⁵ Council of the European Union, The European Union Counter-Terrorism Strategy, 14469/4/05 Rev 4, Brussels, 30 November 2005, pp.12-13.

¹⁰⁶ Ibid. p.11.

Council in November 2009.¹⁰⁷ The implementation of the Action Plan is a key part of the EU Internal Security Strategy in Action.¹⁰⁸

The Action Plan deals with the issue of non-proliferation by framing it as “the threat of a terrorist group acquiring Chemical, Biological, Radiological or Nuclear (CBRN) materials”¹⁰⁹ and which has led governments and international organisations to adopt far-reaching regulations¹¹⁰ and programmes to defend populations against the associated risks. Based on an all-hazard approach, the Action Plan's overall goal is to reduce the threat of, and damage from CBRN incidents of accidental, natural and intentional origin, including terrorist acts. The Action Plan contributes to the implementation of the EU Counter Terrorism Strategy and is in line with the Internal Security Strategy¹¹¹. The Action Plan is implemented by EU bodies, such as the European Commission, the EEAS and Europol¹¹², Member States' public authorities and other relevant stakeholders such as the private sector, the health care sector and academic institutions. The IAEA and Interpol are closely associated to the implementation of the Action Plan.

Through technical support and funding by the IFS, the INSC and Council decisions, the Action Plan sets out to enhance regional and international collaboration regarding CBRN security. One of the core recommendations of the Action Plan was to strengthen the EU's effort to present a coordinated view in multilateral arms control arenas such as the IAEA, the OPCW, the BTWC Conference, Interpol and the Global Health Security Initiative¹¹³ (GHSI).¹¹⁴

¹⁰⁷ Council of the European Union, Council Conclusions on strengthening chemical, biological, radiological and nuclear (CBRN) security in the European Union - an EU CBRN Action Plan, 15505/1/09 Rev 1, Brussels, 12 November 2009.

¹⁰⁸ Communication from the Commission to the European Parliament and the Council, The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM(2010) 673 final, Brussels, 22 November 2010.

¹⁰⁹ Council of the European Union, (note 168), p.2.

¹¹⁰ Such as UN Security Council Resolution 1540.

¹¹¹ European Commission, Progress Report on the Implementation of the EU CBRN Action Plan, May 2012, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/crisis-and-terrorism/securing-dangerous-material/docs/eu_cbrn_action_plan_progress_report_en.pdf.

¹¹² Since 2008, Europol manages a CBRN database of CBRN terrorism-related events and CBRN products and materials.

¹¹³ The Global Health Security Initiative (GHSI) is an international partnership of like-minded countries to strengthen health preparedness and the global response to threats of CBRN substances and pandemic influenza. The initiative was launched by the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States) plus Mexico and the European Commission in November 2001. Commission of

The main financial tools available to the Commission to support the implementation of the CBRN Action Plan are the specific programmes “Prevention, Preparedness and Consequence Management of Terrorism and Other Security Related Risks” (CIPS) and “Prevention of and Fight against Crime” (ISEC), both of which DG HOME manages.¹¹⁵ For the period 2007-2013, the EU has allocated EUR 140 million for CIPS, while ISEC has a budget of EUR 600 million for the period 2007-2013.¹¹⁶

2.8 Health policy and Humanitarian Aid and Civil Protection

CBRN issues are also dealt by the DG Health and Consumers (DG SANCO) through the Health Threat Unit. Addressing the threat of CBRN agents was a core objective in the EU Health Strategy “Together for health”¹¹⁷, adopted in 2007 and defining bioterrorism as one of four major potential threats to health. On the basis of art. 168 TFEU, “A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities. Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health (...)”¹¹⁸

However, health threats of radiological or nuclear origin causing exposure to ionising radiation are covered by the provisions of the Treaty establishing the European Atomic Energy Community (Articles 2(b) and 30-39), which constitutes

the European Communities, Commission Staff Working Document “Health Security in the European Union and Internationally”, SEC(2009) 1622 final, Brussels, 23 November 2009, p.3.

¹¹⁴ European Commission, COM(2009) 273 final (note 168), pp.9-10.

¹¹⁵ Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Security and Safeguarding Liberties, the Specific Programme “Prevention of and Fight against Crime”, *Official Journal of the European Union*, L58, vol. 50 (24 February 2007), pp. 7-12.

¹¹⁶ European Commission/DGs/Home Affairs, http://ec.europa.eu/dgs/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime/index_en.htm.

¹¹⁷ Commission of the European Communities, WHITE PAPER Together for Health: A Strategic Approach for the EU 2008-2013, COM(2007) 630 final, Brussels, 23 October 2007.

¹¹⁸ Art. 168 TFEU.

the “*lex specialis*” in relation to Article 168 of the Treaty on the Functioning of the European Union.

Being public health a competence shared between MS and EU, the EU’ s action aims at completing Member States national public system also by encouraging cooperation between MSs especially “to improve the complementarity of their health services in cross-border areas”¹¹⁹. In fact, according to the Health Strategy, Union-level action included scientific risk assessment, preparedness and response to bioterrorism as well as Union-level cooperation and coordination between MSs and international actors.¹²⁰

The DG SANCO finances non-proliferation projects in third countries, including “EpiSouth Plus”, jointly with DEVCO, and the health monitoring system “Alerting System and Development of a Health Surveillance System for the Deliberate Release of Chemicals by Terrorists”. EpiSouth Plus is a network for the control of public health threats and other bio-security risks in the Mediterranean Region and Balkans, which includes 9 EU Member States and 18 non-EU States. The Alerting System involves developing mechanisms for analysis and reporting information and consulting with EU Member States and stakeholders on health issues at community, national and international levels.¹²¹ The Commission coordinates health security measures in the EU through its Health Security Committee (HSC). The HSC is an informal cooperation and coordination body chaired by DG SANCO that meets twice a year and includes representatives from all EU Member States as well as from other relevant Commission departments and agencies (e.g. the ECDC)¹²². It addresses CBRN threats by concentrating on health-related threats from terrorism or any deliberate release

¹¹⁹ Ibid.

¹²⁰ Commission of the European Communities, Commission Staff Working Document “Health Security in the European Union and Internationally”, SEC(2009) 1622 final, Brussels, 23 November 2009.

¹²¹ European Commission, Directorate General for Health and Consumers, “Public health”, http://ec.europa.eu/health/preparedness_response/projects/index_en.htm.

¹²² European Centre for Disease Prevention and Control (ECDC) was established in 2005. It is an EU agency aimed at strengthening Europe's defences against infectious diseases. It is seated in Stockholm, Sweden. According to the Article 3 of the Founding Regulation (Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for Disease Prevention and Control), ECDC's mission is to identify, assess and communicate current and emerging threats to human health posed by infectious diseases. In order to achieve this mission, ECDC works in partnership with national health protection bodies across Europe to strengthen and develop continent-wide disease surveillance and early warning systems. European Centre for Disease Prevention and Control, <http://www.ecdc.europa.eu/en/aboutus/Mission/Pages/Mission.aspx>

of biological or other agents. It also seeks to raise levels of preparedness for cross-border threats.¹²³ The EU Health Programme 2008–13 provides financial support for the work of the HSC and actions on preparedness and response to CBRN threats to public health.¹²⁴

It is worth noticing that also the development of this EU security-oriented health policy is an internal reaction to the changed global security environment, as stated in the Commission Staff Working Document “Health Security in the European Union and Internationally” of 2009: “The strategic policy framework on health security was developed after the terrorist attacks in the USA on 11 September 2001 and the subsequent anthrax scare. Other health threat incidents in Europe have also helped to shape the approach of the EU. In particular, the threat of CBRN agents, ranging from natural disease outbreaks to deliberate attacks, has demonstrated the need to be prepared for large-scale public health emergencies with significant international impact. Foreign security policy-makers have recognised this by creating a clear priority to put global health security higher on foreign policy agendas”.¹²⁵

Another DG involved in granting security against CBRN threats is the DG for Humanitarian Aid and Civil Protection (DG ECHO) through the Civil Protection Financial Instrument. The Civil Protection Financial Instrument is a budget instrument under the Euratom Treaty established by the Council Decision 2007/162/EC. It aims to “support and complement the efforts of the Member States for the protection, primarily of people but also of the environment and property, including cultural heritage, in the event of natural and man-made disasters, acts of terrorism and technological, radiological or environmental accidents and to facilitate reinforced cooperation between the Member States in the field of civil protection”.¹²⁶

The Commission is involved in providing logistical support for the assessment and coordination of the experts it deploys; facilitating the pooling of Member States’ transport and equipment resources; assisting the member states to

¹²³ Grip, L., 2009, p.14.

¹²⁴ Decision No. 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-2013), *Official Journal of the European Union*, L 301/3, 20 November 2007.

¹²⁵ Commission of the European Communities, (note 181), pp.3-4.

¹²⁶ Council Decision of 5 March 2007 establishing a Civil Protection Financial Instrument (2007/162/EC, Euratom), *Official Journal of the European Union*, L71, 10 Mar. 2007, p. 9.

identify and facilitate their access to transport resources and equipment which may be available from other sources; and financing any additional transport necessary to ensure the timely and effective delivery of the civil protection response.¹²⁷

CONSTRAINTS TO EU'S WMD NON-PROLIFERATION POLICY

Constraints to the effective and efficient implementation of the EU WMD non-proliferation policy are of different types and importance.

3.1 The different nuclear status of the MS and their transatlantic links

Eleven Member States are members of the NATO, two of which (the UK and France) are recognised nuclear powers. Four other Members host NATO nuclear weapons on their territory (Belgium, Germany, Italy, and the Netherlands). Four Member States remain protected by the Alliance's nuclear umbrella (Denmark, Greece, Luxemburg, Spain and Portugal). Finally, four further non-aligned EU Member States (Austria, Finland, Ireland and Sweden) are not only nuclear free, and highly disarmament-minded.¹²⁸

Different attitudes exist with regard to the transatlantic link. Relations with the US remain of great importance to the Union, but in security matters Member States display different degrees of preparedness to express divergences with the US policies. Regarding the members of the Alliance (which make up the majority of EU states), there is a fear that antagonising the US over nuclear issues will weaken the security relationship embodied by the Alliance. Therefore, the attitude of every single European State towards nuclear weapons is largely determined by its relationship with NATO.¹²⁹

Due to the multiplicity of positions on nuclear questions and since the CFSP operates by consensus on substantive issues, the EU has only been able to take those initiatives on which everyone agreed. This has resulted in a selective approach to nuclear weapons issues which has privileged non-proliferation over disarmament. Even within the non-proliferation realm, the level of attention devoted to different issues has varied substantially. While some of them have

¹²⁷ Ibid. p.2.

¹²⁸ Portela, 2003, p.3.

¹²⁹ See Harald Müller, Introduction, in: Harald Müller (ed.): Europe and nuclear disarmament, Frankfurt/M. (PRIF), 1998. See also Stuart Croft, Nuclear issues, in: Jolyon Howorth/Anand Menon (eds.), The European Union and National Defence Policy, London (Routledge) 1997, pp.141-154.

been subject to EU action, others have been hardly dealt with or even completely neglected.¹³⁰

3.2 Institutional settings' constrains

If on one hand, the new institutional structure designed by the Treaty of Lisbon was an attempt to bring more coherence and unity within the EU, on the other, the new institutional setting did create some points of friction in several ways leading to a lack of consistency within the EU WMD non-proliferation policy. With regard to consistency of the EU's international policy, Nuttall distinguishes horizontal consistency (between different types of EU policy), vertical consistency (between the policies of MS and the outcomes they have agreed upon within the CFSP) and institutional consistency (between two different bureaucratic apparatuses, of the Council and of the Commission).¹³¹ Concerning the EU WMD non-proliferation policy, while Kamil Zwolski focuses on the institutional consistency, identifying the first inter-institutional competition between the Commission and the Council General Secretariat, Lina Grip, mapping the EU's institutional actors related to EU WMD non-proliferation policy, highlights the horizontal nature of the issue which still lacks internal coordination.

3.2 a) European Commission Vs Council General Secretariat

Concerning the WMD non-proliferation policy, the first point of friction is identified by K. Zwolski between the Commission and the Council General Secretariat. According to the author, "for many years, the EU's policy on non-proliferation of Weapons of Mass Destruction has been a victim of institutional fragmentation, imbedded in the post-Maastricht formal separation of the European Community from the CFSP. On the one hand, since the beginning of the 1990s, the European Commission was developing capacity-building projects on non-proliferation and nuclear safety, utilising its geographical and thematic financial instruments. On the other hand, more recently, permanent bureaucratic structures entrusted with implementing the EU's WMD Strategy were established in the Council General Secretariat. This posed a challenge to consistency of the EU's non proliferation efforts and even triggered inter-institutional competition

¹³⁰ For a discussion of the attitudes of different European countries to possible steps towards nuclear disarmament, see Müller 1998.

¹³¹ Nuttall, S., 2005. (In Zwolski's paper, p.359).

over limited resources”.¹³² In this perspective, competition is the consequence of the evolution of two internal separate processes which allowed each institution to increase its actorness in the field, developing two types of EU’s non-proliferation policy: the one conducted by the Council General Secretariat within the CFSP framework and another one conducted by the Commission within the former Community framework. As described in Section I, the first efforts to develop a common non-proliferation policy started in the framework of the EPC (established in 1970 with the so-called “Luxemburg Report”), which was an informal and non binding framework since the report was not ratified by national legislation. Its establishment resulted in adopting a number of common declarations within the framework of international non-proliferation regimes, but these efforts were of purely intergovernmental character, not embedded in any formal institutional framework. In this context, the Treaty of Maastricht introduced important reforms, integrating the EPC into the structure of the Council of the European Union, thus establishing the CFSP. Initially, this intergovernmental cooperation was the only pillar of the European non-proliferation policy, because the Commission did not play any substantial role in this policy area. The situation changed in the 1990s, when following the disintegration of the Soviet Union, Russia was left with the largest CBRN stockpile, located in the largest number of buildings, with insufficient security and safety measures.¹³³ In response to this threat of the proliferation of CBRN materials, the Commission got involved in providing technical and financial assistance which is known as the Technical Aid to the Commonwealth of Independent States (TACIS).¹³⁴ With regard to preventing the proliferation of WMDs as such, redirection of former Soviet scientists became the most prominent area of involvement for the European Community.¹³⁵ For this purpose, two scientific centres were established: the International Science and Technology Centre (ISTC) in Russia and the Science and Technology Centre in Ukraine (STCU). Consequently, through its non-proliferation and nuclear-safety assistance, the European Commission emerged as the second pillar in the EU’s non-proliferation policy but, the involvement of the Community in this policy area did not become the source of inter-institutional

¹³² Zwolski, K., 2012, p.357.

¹³³ Turpen, E., and Finlay, B., 2009. (In Zwolski’s paper, p.361).

¹³⁴ Commission (1993) “TACIS: Annual Report from the Commission, 1991 and 1992”, Commission of the European Communities, COM(93) 362 final, Brussels. (In Zwolski’s paper, p.366).

¹³⁵ Commission (2001) “TACIS Regional Cooperation: Strategic Considerations 2002–2006 and Indicative Programme 2002–2003. Annex C: The ICTC/STCU Indicative Programmes for 2002–2003”, European Commission, 27 December 2001, Brussels.

tension for over a decade for two reasons. First, the activities of the Commission were considered of purely financial and technical character; second and most important, because the Council General Secretariat did not have a permanent non-proliferation bureaucratic structure until 2003. In fact, the inter-institutional tension started when the HR for the CFSP, Javier Solana, appointed Annalisa Giannella as his Personal Representative on non-proliferation of WMD in 2003, starting the “competition” with the Directorate-General External Relations (DG Relex), responsible for programming non-proliferation projects of the Commission.

The consequence has been the development, since 2003, of the EU’s non-proliferation policy in two separate institutions, with different cultures, instruments and resources. On the one hand, the Commission has been involved in long-term capacity-building activities of a relatively low political profile, but with significant resources at its disposal. On the other, the Council General Secretariat has become the main focal point for the EU to implement the WMD Strategy, mainly through international negotiations and agreements.

The establishment and location, in 2006, of the WMD Monitoring Centre within the Council General Secretariat, which aimed at “enhancing effectiveness and consistency without any modification of institutional settings and prerogatives, by establishing a cooperative working method which allows the Council Secretariat/HR, the Commission services and Member States to work together, and ensure better synergy”¹³⁶ is a proof indicating that Member States recognised the challenge of ensuring institutional consistency in non-proliferation policy long before establishing the EEAS and it was already scheduled in the WMD Strategy.

The second condition contributing to the competitiveness between the two institutions, has been the Commission’s 2004 proposal for a regulation establishing the IFS.¹³⁷ In contrast to the low-key activities of the Community under TACIS, the IFS was about to become the EU’s main instrument for delivering security-oriented financial assistance. The Commission’s proposal sparked controversy, leading to concerns that the Community pillar would effectively become an alarmingly powerful actor in non-proliferation policy,

¹³⁶ Council, (note 4), p.3.

¹³⁷ Commission (2004) “Proposal for a Regulation of the Council establishing an Instrument for Stability”, European Commission, COM(2004) 630 final, Brussels.

considering its much larger budget compared to very limited resources within the CFSP framework.¹³⁸

Even though the “non-proliferation” element was played down in the final regulation as compared to the original Commission’s proposal, the IFS, following the expiration of TACIS in 2006, emerged as “the sole Community instrument¹³⁹ that can directly address issues relating to the risks presented by the weaponisation of chemical, biological, radiological and nuclear agents.”¹⁴⁰

Furthermore, the Commission still had more significant resources at its disposal for non-proliferation and nuclear safety projects as compared to the resources of the Council within the framework of the CFSP. For example, in 2010, the CFSP budget for non-proliferation and nuclear safety was over €22 million,¹⁴¹ whilst average annual IFS and INSC budget for non-proliferation is around €112 million for the period 2007–2013.¹⁴² The Commission’s funding included both the IFS as well as the INSC, which took over the “nuclear safety” component of TACIS.¹⁴³

This financial discrepancy unveils the structural causes of inter-institutional competition between the Commission and the Council General Secretariat in the area of non-proliferation policy.

It could be said that the former Director for Non-proliferation and Disarmament at the EEAS shares partially and indirectly this point of view, when stating that “the focus now seems to be not on the political initiative of the EU, but rather on assistance programmes and on financial instruments” and that “assistance

¹³⁸ Zwolski, K., 2012.

¹³⁹ Several financial instruments are used to fund the EU’s CBRN risk mitigation programmes. However, while all of the instruments are part of the common EU budget, a distinction can be made between the Common Foreign and Security Policy (CFSP) budget established to provide short-term assistance and the European Commission’s budget instruments used for long-term responses to global security threats.

¹⁴⁰ Commission, “The Instrument for Stability: Strategy Paper 2007–2011”, European Commission.

http://ec.europa.eu/europeaid/how/finance/documents/eidhr/ifs_strategy_2007-2011_en.pdf.

¹⁴¹ Council (2011) “2010 CFSP Budget—Final update of the 2010 CFSP Budget”, Council of the European Union, 5230/11, Brussels

¹⁴² Commission, “The Instrument for Stability: Strategy Paper 2007–2011”, European Commission.

http://ec.europa.eu/europeaid/how/finance/documents/eidhr/ifs_strategy_2007-2011_en.pdf. Council (2007) “Council Regulation (EURATOM) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation”, Council of the European Union, OJEU L 81.

¹⁴³ Council (2007) “Council Regulation (EURATOM) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation”, Council of the European Union, OJEU L 81.

programmes can achieve good results” but, she adds “only if they are carried out in the context of political cooperation”¹⁴⁴. The use of the modal verb “can” and the insertion of the second sentence starting with a “only if” let imply that these assistance programmes have not yet express their full potential and that the cause relies in political divisions.

3.2 b) High Representative Vs European Commission

The attempt to bring closer together the intergovernmental CFSP and the Communitarian external relations, aside from a simplification in the language of the Treaties implying the terms “EU’s external action”, was made also through the establishment of the double-hatted High Representative for CFSP and Vice-President of the European Commission, but while the new competencies of the HR might contribute to a greater consistency of European foreign policy, they could also give rise to new intra- and inter-institutional tensions at the EU level.

First of all, the competencies conferred upon the HR in the intergovernmental dimension of EU foreign policy-making are complemented by the functions that he/she assumes in his/her role as Vice-President of the Commission and Commissioner for External Relations. If this rather broad mandate might be understood as providing the HR with an overarching coordinating role, which aims at increasing the coherence of all policies conducted by the Commission that have an external relations dimension,¹⁴⁵ it has also been interpreted by some as giving the HR sole control over the four external relations portfolios of the Commission,¹⁴⁶ thus constraining the power of some Commissioners. Moreover, given that under the Lisbon Treaty the Commission loses its right to submit proposals concerning the development of CFSP to the Council, the HR becomes the principal channel for Commission participation in EU external relations.¹⁴⁷

Second, the special status of the HR within the Commission, which results from his/her appointment by the European Council and his/her role as an overarching coordinator of Commission policies with an external relations dimension, could easily become a source of tension between the HR and the Commission President as well as individual Commissioners. The HR could pose a challenge to the Commission President’s traditional role as *primus inter pares* within the

¹⁴⁴ Annalisa Giannella, (note 65).

¹⁴⁵ Avery, G., 2007.

¹⁴⁶ These are “Development and Humanitarian Aid”, “External Relations and European Neighbourhood Policy”, “Enlargement” and “Trade”.

¹⁴⁷ Dagand, S., 2008.

college of Commissioners.¹⁴⁸ In terms of the relations of the HR with individual Commissioners, the long established principle that all Commissioners are equal might clash with the powers of the HR, providing another source of potential tension.¹⁴⁹

Third, in addition to the possible tensions that the status of the HR might create within the Commission, it is also conceivable that due to a necessity to prioritise his/her various tasks, the HR will not be able to make the expected contribution towards reducing inconsistencies between the intergovernmental and communitarian aspects of EU foreign policy mainly because the HR is clearly accountable to the European Council, while his accountability to the Commission and its President as well as the EP remains rather ambiguous. In his/her own interest, therefore, the HR must be primarily concerned with accommodating the interests of the Member States in the formulation and implementation of EU foreign policy. At the same time, the HR's credibility as an actor in international affairs will be dependent on the extent to which he commands the support of the MSs.

3.2 c) The European External Action Service - EEAS

The establishment of the EEAS is seen by some authors¹⁵⁰ as the recognition of the internal tension between the intergovernmental CFSP and EU's external relations and therefore the attempt to overcome it. However, the structure of the EEAS is the result of the "fusion" of three main components: "one-third of the unit dealing with non-proliferation in the EEAS consists of officials formerly working in DG Relex of the European Commission; another one-third is composed of officials who used to work in Giannella's office in the Council General Secretariat (Ms Giannella was appointed in charge of the non-proliferation unit of EEAS); the remaining one-third consists of the representatives of member states. This means that three bodies with distinctive diplomatic cultures and experiences work together, involved in developing two dimensions of the EU's non-proliferation policy, formerly developed by separate bureaucracies."¹⁵¹

The fact that EEAS staff working in the non-proliferation area originate from different sources and corporate cultures could be helpful in that respect, as it combines the knowledge, experience and networks of the three different

¹⁴⁸ Avery, G., 2007.

¹⁴⁹ Avery, G., 2007.

¹⁵⁰ See for example Grip, L., 2011 and Zwolski, K., 2012.

¹⁵¹ Zwolski, 2012, p.369.

structures to advance projects and to find a balance between the priorities of the Council and the Commission, but according to some officials who worked in the EEAS¹⁵², the practise seems to have been different from the theory. Apparently, the “multilayered” structure of the EEAS does create some problems of "loyalty" and therefore obstacles to an efficient and coherent work.

The same insatisfaction about the EEAS has been expressed by the former Director for Non-proliferation and Disarmamene at the EEAS, Annalisa Giannella who argues that the EEAS does not seem to take full advantage of the new treaty and of the new structures.¹⁵³

3.3 Horizontal consistency

The statement in the EU Strategy Against Proliferation of WMD, concerning the fact that the EU will face the challenge using “all the instruments and policies at its disposal”¹⁵⁴ together with the new framing of the EU’s external action within the Treaty of Lisbon allow for a more Communitarian framing of the issue. However, this horizontal framing of the WMD non-proliferation Strategy, though it wanted to be “global”¹⁵⁵ in its approach to the issue, finished to be rather uncoordinated.

A lack of coherency and coordination is identified by Grip at the level of the policy evaluation of the EU non-proliferation effort. The author describes this policy evaluation as a “decentralized evaluation system” which makes very difficult to jointly evaluate different institutional actors’ activities and programmes within the same policy area (e.g. non-proliferation activities under the CFSP and the IFS budgets). In fact, the EU has several mechanisms in place to evaluate the implementation of its non-proliferation policies. As a function of the CFSP, the disarmament and non-proliferation division in the EEAS follows the implementation of the WMD Strategy and the NLA on EU WMD Strategy by producing six-monthly progress reports. In addition, each implementing agent benefiting from EU funding is required to report to the Commission on project results and budget spending. The Commission evaluates its CBRN non-proliferation projects and programmes based on the “financial regulation” and the “communication on evaluation”. The first, as spelled out in its implementing rules,

¹⁵² Kyriakos Revelas, Senior policy analyst at the Security Policy Division of the EEAS. Conference at the University of Liège. 5 March 2013.

¹⁵³ Annalisa Giannella, (note 65).

¹⁵⁴ Council of The European Union, WMD Strategy, (note 93), p.2.

¹⁵⁵ “Global” in the sense of involving several EU’s policy areas.

requires all programmes and activities involving “significant spending” to be evaluated both before and after such spending.¹⁵⁶ The communication on evaluation requires all Commission activities addressed to external parties to be periodically evaluated.¹⁵⁷ These evaluations fall within the competence of the DG managing the instrument. For example, evaluation of activities funded by the IFS falls under the DG DEVCO.

Each DG has an evaluation function responsible for ensuring that the conclusions and recommendations of evaluations are used to improve ongoing and future policy initiatives. The Commission Secretariat General coordinates the evaluation framework centrally and communicates priorities from the central function to the functional DGs through a network of representatives from the evaluation units. At the programme level, the Commission DGs and other institutional bodies in the EU may turn to independent evaluators.

3.4 EU WMD non-proliferation policy: an intergovernmental content in a Communitarian box

If it is true that the Treaty of Lisbon abandoned the pillar structure, that the European Council “legalised” its position within the EU institutional setting and allowed for a more “Communitarian” framing of foreign policy issues (and in particular WMD non-proliferation) by the “EU’s external action” formula and by the linking roles of the HR/VP and the EEAS, it is also true that this apparently unifying setting hides, indeed, a more MS-controlled policy and this is possible through several “*escamotages*”.

The Commission which had developed, since the 1990s, a competence in the field through assistance programmes and reinforced its role and power with the establishment of the IFS in 2007 (therefore before the entry into force of the Lisbon Treaty), saw its role and control power played down with the entry into force of the Lisbon Treaty because of the new competences of the HR/VP and the newly established EEAS. In fact, in the new institutional setting,

the HR/VP:

¹⁵⁶ See e.g. Regulation (EC) no. 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, Official Journal of the European Union, L327, 24 Nov. 2006, Article 21.

¹⁵⁷ European Commission, Communication to the Commission from Ms Grybauskaitė in agreement with the President, “Responding to strategic needs: reinforcing the use of evaluation”, SEC(2007)213, 21 Feb. 2007.

- is in charge of conducting all responsibilities incumbent on the Commission in external relations and ensuring their consistency with other components of EU foreign policy (Art. 18.4 TEU); the HR has control over the four external relations portfolios of the Commission, thus constraining the power of some Commissioners;
- has the capacity to entertain political dialogues with third parties and to express EU positions in international organisations and at international conferences (Art. 27 TEU);

the Commission

- loses its right to submit proposals concerning the development of CFSP to the Council;
- loses its Delegations which are now an integrated part of the EEAS;
- is responsible for the financial implementation of the CFSP budget and the IFS but under the authority of the HR, in the position's capacity as Vice-President of the Commission and the Commission department responsible for this implementation is the Foreign Policy Instruments Service (SFPI) although part of the Commission, is housed alongside the EEAS;

The Delegations of the EEAS (under the authority of the HR):

- undertake the representation of EURATOM in third countries and at international organizations such as the IAEA;
- monitor all IFS programmes in the beneficiary countries;
- provide project proposals to the EEAS Secretariat and are directly responsible for the implementation of adopted assistance programmes, which allows negotiation and conclusion of contracts with local counterparts and also the monitoring of project implementation in the field.

On the other side:

- the HR is clearly accountable to the European Council, while his accountability to the Commission and its President as well as the EP remains rather ambiguous;
- the European Council's right to identify the strategic interests and objectives of the Union in relation "to the common foreign and security policy and to other areas of the external action of the Union" (Art. 22.1 TEU), in legal terms, means a significant extension of the competencies of the European Council to the Communitarian aspects of EU foreign policy.

CONCLUSION

In the light of the examined context, one question arises: does a unique and coherent EU WMD non-proliferation policy exist?

As usual at the EU, any steps forward, in order to be achieved, has to be accompanied by a step backward or, at least, the possibility to step back. In this case, the steps forward have been the institutional novelties introduced by the Treaty of Lisbon in the name of EU's coherency, coordination and visibility and in particular the formal abolition of the two pillars structure within EU foreign policy

(the intergovernmental pillar of CFSP managed by the Council Secretariat and the Community pillar of external policies managed by the Commission) and the establishment of the linking roles of the HR/VP and the EEAS. However, this new and more “Communitarian” framing of EU foreign policy hides old and new rivalries and loyalties, triggering a vicious cycle.

The attempt to bring coherence and coordination through the HR and the EEAS is indeed undermined by the HR’s priority to “satisfy” the European Council to which he/she is accountable and Member States’ strategic interests. Because of Member States’ different strategic interests, a hot issue such as WMD non-proliferation must rely on internal consensus which is difficult to reach due to MSs’ diverging positions which lead to an inconsistent and incoherent EU WMD non-proliferation policy which leads to a loss of EU’s credibility on the international scene which causes a decrease in effectiveness of EU’ strategies and policies to fight WMD proliferation. In this causal chain, EU’s “effective multilateralism” is not “effective” because internal mechanisms (see *infra*) have been established to impede this effectiveness and it is “multilateral” as multilateralism is the only condition circumscribed enough to serve as common ground and, open enough to let each actor do his own cost/benefit analysis in order to decide to be in or to be out. Consequently, the EU’s activity regarding non-proliferation regimes avoids any divisive projects and focuses on areas where a strong consensus exists, most notably measures to improve the universality and verification of relevant non-proliferation treaties, export controls¹⁵⁸ and the coordination of EU Member States in the non-proliferation regimes. This means, however, that the EU is mainly active where internal consensus is easily achieved, not where external demands are most pressing. For example, the EU’s reaction towards the US-India nuclear deal or North Korea’s nuclear weapon test¹⁵⁹ has been, if at all, very limited.

The internal mechanisms impeding an effective EU WMD non-proliferation policy, summarised are:

- 1) the limitation of the inclusion of the WMD clause only in mixed agreements with third countries, requiring a consensus vote in the Council and the ratification by all EU Member States, (which is symptomatic since the application of a QMV procedure would have been too “permissive”);

¹⁵⁸ Even in this policy, however, paragraph 3.3 of Section III showed how part of the implementation depends on MS and there are different degrees of effective implementation among EU’s Member States.

¹⁵⁹ Wulf, 2006.

2) the differences among Member States concerning the implementation of the legislation in the field of dual-use export controls;¹⁶⁰

3) the new institutional setting which, through the processes showed in paragraph 4.4, creates several points of friction between EU institutions and transferring EU's "external action" into the HR's hands, indirectly make the EU WMD non-proliferation policy a Member States-led issue with the main outcome of generating the above described vicious cycle.

If it is true that the European Union exists because of Member States' will, it is also true that MSs provided the EU with its own founding principles which are something more than the simple addition of the single MSs' founding principles and there is more; MSs decided that "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world (...)"¹⁶¹.

On these basis, EU Member States should find the courage to step out of their national dimension and launch themselves in the EU dimension, the only dimension able to maximise the general interest.

Concerning the effectiveness of the EU WMD non-proliferation policy, if it works on the theoretical level, it can be improved empirically by making it "an European issue into an European box" by overcoming some of the above listed constrains.

At the institutional level, the linking roles of the HR/VP and the EEAS should be more "Europeanised", for example by making the HR directly accountable to the EP, so to be more independent from MSs' will and to contribute to strengthen the EP's role and HR's democratic legitimacy. The EEAS should be composed only by EU officials who are EU-minded, so to avoid "loyalty crisis" which could lead to incoherent action.

Finally, QMV should be the ordinary procedure as far as it is the best compromise between "democracy" and efficiency and it would avoid not to be too pro-EU states to do the good and bad weather in EU's politics.

Maybe a real unique and coherent EU WMD non-proliferation policy does not exist yet because, until now, an "European box" was seen as a satisfying

¹⁶⁰ For an overview of the implementation of the legislation in the field of dual-use export controls regime, see Bauer, S., WMD- related dual use trade control offences in the European Union: penalties and prosecutions, EU Non-proliferation Consortium, Non-proliferation Papers, No. 30, July 2013.

¹⁶¹ Art. 21 of Title V, Chapter 1, TUE.

condition to deal with the issue but, a common understanding also of the content of the box is the only condition for an effective solution, wishing that the solution will be preventing and not remedying.

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