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COVER NOTE

from : General Secretariat
to : Delegations

Subject : Council Conclusions and new lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems

Delegations will find attached the following texts following endorsement by the Council (GAERC) on 8-9 December 2008:

- Council Conclusions on new lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems;
- New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems.

Council Conclusions
as endorsed by the Council on 8-9 December 2008

The Council welcomes the active implementation of the EU WMD Strategy adopted by the European Council in December 2003.

The Council underlines the usefulness of efforts which are being made to further improve the efficiency of the implementation of the Strategy through targeted action. It therefore endorses the document "New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery system" which identifies the following deliverables:

- an updated risk and threat evaluation document;
- models for awareness raising for undertakings, scientific and academic circles, and financial institutions;
- intensifying cooperation with third countries to help them to improve their non-proliferation policies and export controls;
- measures to combat intangible transfers of knowledge and know-how, including mechanisms of cooperation in terms of consular vigilance;
- intensifying efforts to impede proliferation flows and sanction acts of proliferation;
- intensifying efforts to combat proliferation financing;
- intensifying coordination / collaboration with, and contribution to, relevant regional and international organisations.

The Council calls on competent Council formations and bodies, the Commission, other institutions and Member States, to give a concrete follow-up to this document with a view to achieving its objectives by the end 2010.

**NEW LINES FOR ACTION BY THE EUROPEAN UNION
IN COMBATING
THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION
AND THEIR DELIVERY SYSTEMS**

INTRODUCTION

Today, the proliferation of weapons of mass destruction and their delivery systems poses an even greater threat to the security of European citizens than at the time the European Strategy against Proliferation of Weapons of Mass Destruction was adopted.

The proliferation of nuclear, biological and chemical weapons and ballistic and cruise missiles remains a major threat. The destabilising impact of proliferation on international security is intensified by the fact that such proliferation is currently developing most rapidly in areas of tension (the Middle East and Asia), which is having the effect of both raising such tensions and, in the long term, increasing the risk that such weapons will actually be used. Despite measures adopted in the area of non-proliferation, the acceleration of trade and globalisation can facilitate the dissemination of goods and technologies which can contribute to the WMD programmes. Such developments are the result not only of a willingness on the part of certain states, but also of initiatives taken by private and illegal networks. To this may be added the emerging risk that such weapons may be developed and used by terrorists.

Weapons of mass destruction which may be in the hands of states of concern or terrorists/non state actors constitute one of the greatest security challenges which Europeans may ever face. We must accord the highest priority to protecting European citizens and our friends and allies against the existing and growing risk presented by the proliferation of such weapons.

In order to be effective, non-proliferation measures must be based on the following principles:

- strengthening of the non-proliferation regime through the universalisation and full implementation of the Treaties and relevant international agreements;
- resolute action to resolve proliferation crises and ensure implementation of the UNSC resolutions;
- resolute operational cooperation in combating proliferation in order to obstruct sensitive transfers and counter illegal networks.

a)

The 2003 European strategy and the principles determining EU action (effective multilateralism, prevention and international cooperation) are still highly relevant and must continue to be applied. They also assist us in implementing UNSCR 1540 which remains a milestone for the international community as far as non-proliferation is concerned. However, in the light of experience and new developments, lines for action in addition to those which have hitherto been implemented must be identified in such a way as to increase the effectiveness and impact of the EU's approach and make it even more operational.

Our objectives are as follows:

- **To raise the profile of non-proliferation measures** within the EU by turning this fundamental security issue into a cross cutting priority of EU and Member States' policies in respect of all aspects of action to tackle this phenomenon;
- **To identify existing best practice** with a view to **encouraging the spread of such practice** at the level of Member States' national policies;

- **To encourage better coordination and optimal mobilisation** of Member States' national policies and of existing EU tools and policies, whilst fully respecting Member States' and Community's competencies in these areas;
- **To identify areas where EU action must be stepped up.**

The main deliverables of the action plan can be summarised as follows:

- An updated risk and threat evaluation document ;
- Models for awareness raising for undertakings, scientific and academic circles, and financial institutions ;
- Intensifying cooperation with third countries to help them to improve their non-proliferation policies and export controls;
- Measures to combat intangible transfers of knowledge and know-how, including mechanisms of cooperation in terms of consular vigilance;
- Intensifying efforts to impede proliferation flows and sanction acts of proliferation;
- Intensifying efforts to combat proliferation financing;
- Intensifying coordination/collaboration with, and contribution to, relevant regional and international organisations.

The following plan which identifies new lines for action in addition to those already implemented is drawn up on the basis of the outcome of the non-proliferation seminar organised by the French Presidency in Paris on 15 and 16 July 2008.

It should be noted that, while non-proliferation activities form an essential part of the Common Foreign and Security Policy, certain types of measures may be implemented within the framework of other EU policies and instruments which may contribute towards the same objective (including Community policies and specific instruments such as the Instrument for Stability). In either cases, the powers and authority of the European institutions and Member States, as laid down by the Treaties, will of course be respected and the appropriate instruments used.

The implementation of the Council conclusions of December 2007 addressing CBRN risks and on bio-preparedness will also contribute to the objectives of the new lines of action and following work.

The adoption of this plan by the General Affairs and External Relations Council will provide the European institutions, the Member States and the Council's other configurations with guidance on working in synergy in implementing the WMD strategy.

Various financial instruments such as the Stability Instrument could be used for certain projects, as far as they fall into their respective scope and funds are available.

It is understood that each action or measure contained in this paper will be assessed, discussed, and formalised by the competent Council bodies according to the relevant procedure and fully respecting Community's or Member States' competencies.

Close coordination between EU institutions and Member States will be necessary to ensure coherence and synergies between ongoing and future activities and actions.

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VI. TIME FRAME FOR IMPLEMENTATION

I. Knowing and anticipating

1. Drafting of a risk and threat evaluation document

In order to better target and calibrate EU action, the SITCEN should draw up a **specific document** for evaluating trends, risks and threats with regard to proliferation, including the threat of terrorist access to WMD, which should be updated annually.

Such a document, produced by SITCEN on the basis of various types of information, should:

- comprise an up-to-date analysis of risks and threats: an overall picture of trends in the proliferation of weapons of mass destruction and their delivery systems, and the status of NBC proliferating programmes and missile programmes in the context of proliferation crises;
- be supplemented by scientific studies, and in particular:
 - * a specific map of proliferation networks and procurement requirements for proliferating programmes, in particular in the nuclear and ballistic areas;
 - * determining factors in scientific, technological ("technological lock-ups") and industrial fields;
 - * a study establishing the profile and modus operandi for the illegal transportation of proliferation material by operators involved in such flows by air, by sea, by land, by railways...) which would identify the entities which might acquire proliferation goods;
 - * an evaluation of priority geographical zones and areas for the EU's assistance and cooperation measures with regard to non-proliferation;
 - * a study of proliferation financing methods and networks, updated as required;

- Could be used in competent Council bodies which are in charge for the elaboration of recommendations on action to be taken to combat proliferation activities, to be submitted as appropriate to the Council.

The level of success of this mission will depend on the amount of information and analytic input supplied by Member states to SITCEN. The Commission and relevant EU bodies/agencies (EUROPOL, EUROJUST, FRONTEX) are fully associated to the above.

2. **Benefiting from a network of independent European non-proliferation "think tanks"**

EU action to counter proliferation could benefit from the support provided by a **non-governmental non-proliferation network**, bringing together foreign policy institutions and research centres specialising in the EU's strategic areas while building on useful networks which already exist. Such a network could be extended to institutions in third countries with which the EU is conducting specific dialogues in connection with non-proliferation.

This network of independent non-proliferation think tanks would aim to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil societies, and more particularly among experts, researchers and academics. It will constitute a useful stepping stone for non-proliferation action by the EU and the international community.

The network could be chaired by the SG/HR's personal representative for non-proliferation, in accordance with the guidelines defined within the framework of the WMD Centre with regard to non-proliferation measures. CODUN/CONOP will be able to consult the network on issues related to non-proliferation and its representatives may attend the network's meetings. These meetings may be organised back to back with these working groups.

A meeting gathering all independent think tanks could meet in Brussels, or elsewhere in the EU, every two years and submit a report/recommendations to the SG/HR's personal representative for non-proliferation.

The possibilities and modalities of a financial contribution will have to be examined.

II. Preventing

A. Strengthening measures to combat intangible transfers of knowledge and know-how

1. Protection of scientific and technical assets

Bearing in mind the need to exercise vigilance and prevent specialised teaching or training in disciplines that could contribute to the proliferation programmes of sensitive countries, supervising access by foreign nationals to research establishments, bodies or institutions engaged in scientific activities of a sensitive nature is an essential instrument in fighting proliferation. Our objective is to strengthen Member States' efficiency in that regard by identifying areas of common concerns, exchanging information on current practices and possible actions that could be taken together.

1. On the basis of a risk and threat evaluation document, the Council could adopt a common position, paying particular attention to a list of areas of scientific cooperation.
2. On that basis, the competent working parties would be invited
 - to exchange best practice in that regard, which would help to identify possible procedures;
 - to examine actions that could be taken together to increase our efficiency in this field.

2. Cooperation in terms of consular vigilance

Member States could be encouraged to establish a **consular vigilance procedure**, or to strengthen such a procedure where it already exists, with a view to ensuring the efficient management of access by foreign nationals to their territory taking into account the conclusions of the aforementioned risk and threat evaluation document. The competent national visa-issuing authorities must be made more aware of the problems surrounding non-proliferation measures.

The competent EU institutions and/or other entities, in accordance with the EU founding treaties, could draft a proposal with a view to a decision by the Council/ Member States' representatives meeting within the Council **establishing European cooperation on consular vigilance**.

Such a document could **reiterate the principles** of consular vigilance (the need to prevent intangible proliferation flows pursuant to the commitments made by Member States in connection with the various mechanisms used by suppliers, while encouraging the development of non sensitive academic cooperation) and **provide for specific European coordination measures**, and in particular:

- **Objective of mutual notification of visa refusals** justified by a risk of proliferation in consular posts in sensitive countries.;
- **examination of how this objective could be taken into account**, and consideration of any necessary measures. In the context of the forthcoming introduction of the SIS II, consideration could also be given to modalities that would allow inclusion in the appropriate categories of alert in the SIS of persons involved in proliferation activities;
- Consideration could be given to the creation of a legal mechanism providing for consultation of the SIS in the case of long-stay visas.

3. Stepping up efforts to raise awareness in scientific and academic circles

Academic and scientific circles need to be better informed on non-proliferation issues in general and on potential risks related to their activities. We all agree there is a need to increase the average level of knowledge in that regard. Possible actions could include :

- enhanced exchanges between universities, laboratories, and Member states relevant authorities. Workshops or seminars organized by member states or relevant EU bodies could be helpful in that regard. Their objective could be an exchange of best practices.
- discussions in relevant EU groups on initiatives that could be taken such as : identification of disciplines and issues of special concern ; creation of “awareness centers” in universities that could include standard information and trained personnel, contact points on issues regarding security and non proliferations in universities etc.

4. Adoption of codes of professional conduct

Existing codes of professional conduct for scientists could be supplemented . The aim is to raise awareness that legitimate work can have dual-use applications.

- After making a list of existing codes of professional conduct for scientists in EU Member States which call for abstention from activities that conflict with the objectives of non proliferation and
- after summarising the outcome of the proceedings held in the various relevant bodies,
- activities should be identified to encourage the adoption (e.g. by educational establishments) of codes of professional conduct for scientists within the EU and to promote the adoption of such codes by third States.

B. Stepping up efforts to combat against tangible transfers of technology, goods and equipment

1. Improvement of national export control procedures

The control of exports of dual-use and sensitive items is governed by Regulation (EC) No 1334/2000 as amended. Building on and in order to complement the recommendations adopted by the GAERC in October 2004, (following a peer review among Member States), and without prejudice to Member States' competencies and in particular their right to grant an export licence, the following measures could be encouraged, in accordance with Regulation as in force at time, to optimise national implementing procedures:

- regular and in-depth training of control authorities on the technical characteristics of the goods controlled;
- consider improvement of enforcement measures (such as: computerisation of procedures, enhanced coordination between agencies, better use of the pool of experts created in 2004, support for the launching of a secure system permitting online sharing of information on denials of exports, brokering and transit);
- SITCEN's analysis presented to Council bodies will also be forwarded to national authorities in charge of export controls in order to provide them with a wide range of information.

To back up the improvement of national export control procedures, the Commission and the committee set up by Article 18 of the Regulation could, without prejudice to Member States competencies, consider the following measures:

- production of good practice guides concerning control procedures for exports of dual-use items, in compliance with the Regulation;
- support relevant exchange of experience in order to increase Member States capacity for export controls.;
- contribute to identifying components of training courses within a framework to be defined, taking into account other EU priorities;
- technical examination of proposals of adjustments to export control lists, in compliance with relevant provisions of the Regulation.

2. Greater efforts to raise awareness among undertakings

Member States are encouraged to make greater efforts to **raise awareness among undertakings**.

The following measures in particular could be encouraged:

- More systematic efforts to raise awareness, taking into account EU best practices, will be made at the level of economic operators whose activities may be sensitive from the viewpoint of the proliferation of weapons of mass destruction and their delivery systems, with particular efforts at the level of professional federations, in particular by encouraging regular formal and informal contacts between those operators and the administrations concerned;
- The production of national information documents/ the improvement of national websites explaining the legislative framework and the penalties for circumvention of procedures.

At **European level** the following measures could be considered:

- raising awareness within the EU: organisation of seminars at EU level, in particular with professional federations;
- production of standard information documents explaining the legislative framework applicable;
- exchanging experience concerning the mechanisms introduced.

C. Prevention and punitive action against the financing of proliferation

Proliferation programmes may need considerable financing, given the investment and purchases required. Particular attention must therefore be given to the financing of proliferation, which must be prevented and punished.

1. Strengthening consultation and international instruments

- Member States are encouraged to continue their efforts within the FATF and to consider the international rules and practices that could be adopted, if and when necessary to better combat the financing of proliferation. Member States encourage the FATF to take appropriate measures in order to ensure participation of all EU members in the FATF.
- In order to support international efforts to combat the financing of proliferation, the fight against the financing of proliferation will be raised more systematically in talks with third countries,

2. Raising the awareness of financial institutions and strengthening machinery for combating the financing of proliferation

Pending the strengthening of international instruments and in conformity with the approach described in point 1;

Member States are encouraged to:

- make special efforts to raise the awareness of financial institutions in order not only to prevent proliferation activities from being financed but also to protect our banks from proliferators' malicious intentions;
- improve cooperation between administrative authorities and financial supervisory authorities and encourage the transmission, where necessary, of relevant information for exercising financial vigilance;

The Commission could analyse possible options for promoting the vigilance of financial institutions in the context of combating proliferation financing in light of the progress in the work within the FATF.

3. Improvement of the implementation of financial sanctions, in accordance with international legal obligations arising in particular from UNSC resolutions

The responsible Council bodies and working parties will encourage the exchange of information and good practice with regard to combating the financing of proliferation and compliance with international obligations. To this end, without duplicating the work of FATF, the Council could:

- ask Member States to provide feedback on experience in implementing financial sanctions since resolutions on Iran and DPRK were adopted, identifying in particular the difficulties encountered by the banking sector and improvements that could be made and taking into account lessons learnt on the implementation of sanctions in general based on relevant UNSC Resolutions;
- review, in the Relex counsellors sanction formation, of the existing best practices for sanctions and update them as appropriate, taking into account the work carried out ;

III. Impeding and stopping

A. Stepping up efforts to combat trafficking in CBRN substances and strengthening systems for intercepting proliferation flows

1. Interception of proliferation flow

- The EU will continue efforts to strengthen its external borders against the threat of CBRN trafficking.

- Member States are encouraged to:
 - * carry out random checks using risk criteria and increased exchanges of information concerning entities suspected of trafficking, which will be put forward in the SITCEN document;
 - * examine the conditions under which the exchange of information concerning entities suspected of trafficking can be increased effectively;
 - * continue joint customs operations organised within the framework of the customs Cooperation Working Party (CCWP), which are already carried out to combat proliferation;
 - * launch a discussion on how to better coordinate the means available for interdiction operations (in particular expertise).

2. Support for strengthening international and multilateral instruments to impede proliferation flows

The Council could adopt conclusions encouraging:

- ratification by Member States of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as soon as possible;
- Once 2005 Protocol is ratified by all Member States, elaboration of a mechanism supplementing the Protocol, whereby EU Member States could, as far as compatible with national legislation, give prior mutual consent to the boarding on the high sea of suspicious vessels flying their flag.

Pursuant to Article 19 of the TEU, harmonisation of the EU Member States' positions in international fora (in particular on the initiative put forward at the ICAO) will be sought more effectively.

The EU's participation in the PSI will be one of the core objectives to make its activities more operational. The EU countries and relevant EU institutions are invited to meet in 2009 in a format of the PSI Regional Operational Experts Group in order to assess the possible EU involvement in the PSI.

B. Relaunching European discussion on punitive action against proliferation

1. Strengthening legal means to combat acts of proliferation

Member States are encouraged to survey current practices and legislation and regulation relating to the prevention and punishment of acts of proliferation in order to identify any shortcomings. They are encouraged to increase the effectiveness, consistency, visibility and deterrent nature of their national enforcement measures in the context of combating the proliferation of weapons of mass destruction and their delivery systems.

The Council calls on the competent institutions and working parties to carry out a comparative study on this issue.

2. Agreement at European level to make illegal exports, brokerage and smuggling of weapons and materials of mass destruction subject to criminal sanctions

In order to combat the threat of proliferation, the Council could agree that **criminal sanctions** are appropriate penalties for **illegal exports, brokerage and smuggling of weapons and materials of mass destruction.**

Such a decision would make it possible to achieve the EU's non-proliferation objectives, in accordance with the declaration by the European Council of 18 June 2004 mentioning the concept of convergence of sanctions.

IV. Cooperating and supporting

The EU undertakes to continue and intensify coordination, as appropriate, with other donors to ensure complementarity and maximise impact.

1. More systematic definition of geographical areas and priority areas for technical cooperation

In liaison with the competent departments and in particular on the basis of SITCEN studies, the GSC will draw up a biannual document **defining the geographical priorities** for EU cooperation with third countries. That document will be submitted to and validated by the competent working parties (CONOP, CODUN and the PSC). The Commission will be fully associated.

That document will define the criteria selected for defining the EU's geographical priorities. Stress will have to be laid on the real requirements for strengthening measures to combat proliferation, in close connection with the analyses produced by SITCEN.

2. Increasing assistance and cooperation with regard to combating the proliferation of WMD

- **The EU undertakes to continue and intensify** action to support the treaty regime (joint actions which have been adopted or are in the course of adoption to support the IAEA, the CTBTO and the safeguarding of radioactive sources), the Chemical Weapons Convention, the Biological Weapons Convention, Resolution 1540, the Hague Code of Conduct (plan to make the HCOC universal and financial support for setting up a secure internal HCOC data processing system), code of conduct on the safety and security of radioactive sources the guidance on imports and exports of radioactive sources, further diplomatic démarches to be envisaged in favour of the entry into force of the CTBT and the universalisation of BTWC, CWC, the amended convention of the physical protection of nuclear material and demarches, and in favour of starting negotiations on FMCT. EU will also continue to support the Global Initiative to Combat Nuclear Terrorism (GICNT).

- **Promoting a security culture in the CBRN area**
The following measures should be given priority:
 - establishment of regional centres giving training in **CBRN** security and safety culture;
 - support for IAEA measures to safeguard nuclear and radioactive materials and nuclear installations;
 - a coordinated and complementary approach to biosafety and biosecurity problems guaranteeing optimal management in particular of biological risks and threats.
 - other areas where security culture promotion may be relevant: **strengthening** export control systems building on existing and previous experience and ongoing outreach activities, border management of materials that could be used by terrorists, such as toxic chemicals and illicit trafficking and financial monitoring.

3. Strengthening diplomatic leverage through better use of the WMD clause

In order to derive the greatest benefit from the non-proliferation clause incorporated into EU agreements with third countries since 2003, the Council instructs the GSC, in liaison with the Commission, to draw up **a document assessing the implementation of the WMD clause**.

That document, submitted to the Council for approval:

- will **propose lines of action for improving the process of negotiation** of the clause (more information for the CONOP and CODUN, preparation of documents explaining the clause, designed for geographical groups and third States);
- will make proposals for **evaluating implementation of that clause by third States**, on the basis of criteria to be determined (compliance with treaties, implementation of export controls, report on cooperation with the EU on the basis of that clause);
- will present an **analysis of the procedure for triggering the clause in the even of non-compliance by a third country**.

V. Coordinating

1. Creation of a high-level training course for European officials dealing with proliferation

The Council requests the competent institutions and working parties to present a proposal to it by the end of the first half of 2009 for the creation in 2010 of a **European in-service training course** for officials of EU Member States and the EU to combat the proliferation of WMD and their delivery systems taking into account priorities set by the Council.

The aim of that initiative is to improve the level of scientific and technical expertise of those staff and to encourage the dissemination of a common European administrative culture of combating proliferation, in a networked system.

Training courses, the details of which still have to be determined in the light of existing means (networking of existing national training courses in order to propose a European session) should provide for:

- a theoretical part covering the following aspects: general challenges of combating proliferation, presentation of proliferation prevention mechanisms (organisation, players, treaties, control measures and scientific and technical aspects, in comparison with European practices);
- a part consisting of visits to sites of interest within the European Union.

Security imperatives should be taken into account, in particular those connected with the confidentiality of such training, due to the sensitive nature of certain information which may be exchanged during the training course.

2. Improving the coordination of all the EU's players and resources

In particular, the following measures are recommended:

- **strengthening the role of the WMD Centre**, introducing the practice of meetings in conjunction with CONOP/CODUN meetings **where further modalities with a view to strengthening the Centre's role will be discussed and prepared;**
- endeavouring to achieve greater coordination of all the policies and instruments contributing to implementation of the objectives of combating proliferation and in particular the measures described in this document, taking into account Member states' **and Community's** competencies in those areas;
- **upgrading SITCEN's role in analysing proliferation**
 - * increasing SITCEN's participation so that it can present its analyses in competent working parties and the PSC,
 - * possibility of providing for occasional presentations to the competent Council fora in the context of proliferation crises, without prejudice to existing decision taking procedures;
- designation of a **contact point within the Ministries of Foreign Affairs and the responsible European institutions for the implementation of the new lines of action**, possibly the representatives of member states in CONOP and CODUN working groups. Those correspondents will be preferred discussion partners for European institutions and the personal representative of the SG/HR for the implementation of the EU strategy to fight against proliferation. These correspondents will coordinate with non-proliferation correspondents in other ministries and national competent bodies and will in particular raise awareness about problems being dealt with within their area of competences. An updated list of correspondents could be annexed to the EU's half-yearly report on implementation of the EU WMD strategy.

3. Raising the profile of European Union measures and their assessment

In liaison with the relevant Council and Commission departments, the GSC's contribution to the half-yearly report on implementation of the European strategy for combating proliferation will be an annex bringing together all the measures taken by the EU to support the objectives of combating proliferation. That document will give an overview of joint actions and Community assistance programmes.

TIME FRAME FOR IMPLEMENTATION

The Council sets the goal of achieving the objectives in this plan by 2010.

By the end of the first half of 2009, the GSC will draw up a specific document on the implementation of the strategy and in particular of this plan identifying new lines for action, which will be submitted to the Council. The Commission will be fully associated.
