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Non-proliferation of WMD through
the Control of Dual-use Goods

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The EU: A Global Actor in the Non-proliferation of WMD through the Control of Dual-use Goods

by

Ana Sánchez Cobaleda*

Abstract

The EU is a global actor in the control of dual-use goods, which, in turn, contributes to make it a global actor in the non-proliferation of weapons of mass destruction (WMD). Dual-use goods are items and technologies that have legitimate civilian applications, but can also be used for the development of WMD (i.e. chemical, biological and nuclear weapons). The control of such goods derives from the general international obligation to counter the proliferation, which is also included in the new Global Strategy for the EU's Foreign & Security Policy recently presented by the EU High Representative for External Action. The purpose of this paper is to analyse the main reasons for the EU's global role in the control of dual-use goods and, consequently, in the fight against the proliferation of WMD.

Non-proliferation is expected to become a permanent element of the external policy of the EU. Therefore, it is worth keeping in mind that along with the inspiring legal frameworks, together with the technical cooperation programs offered inside and outside of the Union and through its participation in relevant International Organisations, the EU is also exporting a certain kind of development, inspired by its very own legislative practice and its own safety standards. This array of instruments (ranging from trade to international cooperation and development assistance) strengthens the EU's position in the security and defence field as a global actor in the counter proliferation of WMD.

Keywords: Non-proliferation; Weapons of mass destruction (WMD); Dual-use goods; EU Regulation; Global Security Strategy; Export controls; CBRN CoE; P2P; Outreach

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Normative Influence of the European Union in the Field of International Investment Law

I. Introduction

In the summer of 2016 Federica Mogherini, High Representative for Foreign Affairs and Security Policy, presented the new ‘Global Strategy for the EU’s Foreign and Security Policy’,¹ picking the baton that the European Council had handed her in order to renew the 2003 European Security Strategy (ESS).² In the former ESS, Javier Solana had strived for a ‘Secure Europe in a Better World’, admitting that the proliferation of weapons of mass destruction (WMD) ‘*is potentially the greatest threat to our security*’. With the aim of strengthening the EU’s regime in the field of WMD, the European Council also adopted, at the end of that same year, the ‘Strategy against Proliferation of Weapons of Mass Destruction’, a text whose ultimate objective was ‘*to prevent, deter, halt and, where possible, eliminate proliferation programmes of concern worldwide*’.³

Due to constant technology advances and rapid science changes, the risk of biological, chemical and nuclear attacks in a globalized world is continuously increasing,⁴ which called for a recast of the WMD Strategy and its Plan of Action. ‘The New Lines for Action by the EU in Combatting the Proliferation of WMD and their Delivery Systems’⁵ were adopted in 2008 not in view of replacing the Strategy, but in view of updating it, thus making the EU more operational in the fight against proliferation.⁶

The current Global Security Strategy together with the updated WMD Strategy delineate a common EU approach to non-proliferation. However, the European legal framework is

¹ European External Action Service - *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*, June [2016] http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf (accessed 17 June 2017).

² In the aftermath of the September 11th 2001 terrorist attacks the EU adopted this ESS identifying the proliferation of WMDs like one of the five biggest threats to international security. *European Council - A Secure Europe in a Better World: European Security Strategy*, December 12 [2003], p.3 www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf (accessed 17 June 2017).

³ *Council - EU Strategy against proliferation of Weapons of Mass Destruction*, 15708/03 [2003], p.2 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015708%202003%20INIT> (accessed 17 June 2017).

⁴ *Council - Report of 11 December 2008 on the implementation of the European Security Strategy – Providing security in a changing world*, S407/08 [2008], p.3 www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf (accessed 17 June 2017).

⁵ *Council - 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 [2008] http://trade.ec.europa.eu/doclib/docs/2008/december/tradoc_141740.pdf (accessed 17 June 2017).

⁶ HERTWIG Jana, *European Union Initiatives: Strategy against proliferation of Weapons of Mass Destruction*, in Black Branch J.L. and Fleck Dieter (eds), “Nuclear non-proliferation in International Law – Volume I”, The Hague, T.M.C. ASSER Press (2014), pp. 225-256, p. 236.

far more complex due to the multiple tools the EU can take advantage of.⁷ Within the context of the EU's fight against WMDs, particular stress should be put on Council Regulation n° 428/2009, which sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use goods.⁸ Dual-use goods are items and technologies which can be used for both civil and military purposes. Due to the important role that dual-use goods play in the creation of WMDs and due to the risks that their uncontrolled trafficking would imply for international security,⁹ the EU decided to establish a uniform system of controls which prevent the export of such items to 'sensitive States'.¹⁰ At the same time, this European export control regime promotes a level playing field for all EU dual-use goods exporters.¹¹

The purpose of this paper is to analyse the main reasons for the EU's global role in the control of dual-use goods and, consequently, in the fight against the proliferation of WMD.

The legal basis of the EU dual-use Regulations is Article 207 TFEU, as the controls of dual-use goods exports are an integral part of the Common Commercial Policy. However, the fact that this Regulation pursues both commercial and security objectives gives rise to the question of the uses of Article 40 TEU and whether the *ECOWAS* doctrine can still be used in defining the scope of application of EU policies when dealing with CFSP.¹² *ECOWAS* did not favour the strengthening and the coherence of the EU's external action, but rather fostered its fragmentation.¹³ The fact that after the entry into force of the Lisbon Treaty, Article 40 TEU (former Article 47 TEU) has become a mutual non-affectation clause between CFSP and the other areas of EU action, helped in the development of unity and the strengthening of internal and external coherence. Nevertheless, the definition of the scope of application of EU policies is a case-by-case issue. The Court of Justice of the EU (CJEU) usually has the last saying on this point.

Such potentially doubtful scenario does not apply in the studied field because even prior to the entry into force of the Lisbon Treaty, the Court of Justice had already tackled the delimitation of the scopes of application of the EU policies in the field of dual-use goods

⁷ ÁLVAREZ-VERDUGO Milagros, *Mixing tools against proliferation: the EU's Strategy for Dealing with Weapons of Mass Destruction*, European Foreign Affairs Review, Vol. 11, Issue 3 (2006), pp. 417-438, p. 422.

⁸ Council Regulation of 5 May 2009 No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, [2009] OJ L 134/1.

⁹ Dual-use goods exported from the EU contributed to the creation of Pakistan's secret nuclear weapons programme throughout the 70's and 80's. More on the A.Q. Khan case: International Institute for Strategic Studies, *IISS Strategic Dossier - Nuclear Black Markets: Pakistan, A. Q. Khan and the Rise of Proliferation Networks: A Net Assessment*, IISS London (2007), pp. 65-92., p.65.

¹⁰ 'Sensitive' should be understood in the sense of controversial multifaceted considerations of foreign policy. MICARA Anna Giulia, *Current features of the European Union Regime for Export Control of dual-use goods*, Journal of Common Market Studies, Vol 50, Number 4 (2012), pp. 578-593, p. 581.

¹¹ This needed security/industry balance regarding dual-use export controls had been previously acknowledged by the Council Regulation of 22 June 2000 No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, [2000] OJ L 159/1, p. 2.

¹² ECJ, Case C-91/05, *Commission v Council*, EU:C:2008:288.

¹³ HILLION CH. and WESSEL R.A., *Competence Distribution in EU External Relations after ECOWAS: Clarification or Continued Fuzziness?*, Common Market Law Review, Vol 46, Issue 2 (2009), pp. 551-586, p. 556.

control, while stating that ‘...a measure (...) whose effect is to prevent or restrict the export of certain products, cannot be treated as falling outside the scope of the common commercial policy on the ground that it has foreign policy and security objectives’.¹⁴

This interpretation led the legislator to the replacement of the legal framework (which initially was based on both a CFSP Joint Action and a Regulation adopted under the Common Commercial Policy) with a Regulation based exclusively on Commercial Policy. The latter was one of the current Regulation’s predecessors.¹⁵

The fight against proliferation presents itself as an ideal field to analyse the way in which the EU External Action functions. On one hand it perfectly illustrates the number of acts - albeit diverse in nature - that the EU takes into account in view of constructing its own WMD Policy Framework. Amongst these acts, one can mention acts in the field of the Common Foreign and Security Policy (CFSP), in the field of Common Commercial Policy (like the dual-use Regulation, which is the focus of this paper), non-binding acts (like the WMD Strategy) or technical cooperation projects (like the P2P programme or the CBRN CoE Initiative). The combination of all these legal instruments allows for the EU to impact third countries through a comprehensive array of instruments.

On the other hand, from a political point of view, this issue is also timely, since it shows the intrinsic complexities of the EU’s external role in the field of WMD, specifically in the nuclear field. Considering that some of the EU Member States are either Nuclear Weapons States (NWS) or Non-Nuclear Weapons States (NNWS), there are divergent positions as regards disarmament.¹⁶ Consequently, the EU has opted for setting its interest on the non-proliferation dimension, and not on disarmament works.

For years, the EU’s track record in dealing with WMD proliferation issues was not highly-regarded in the international arena. Indeed, many deemed its soft power insignificant and unsatisfactory.¹⁷ However, the EU is steadily becoming a global actor in the promotion of a stable international environment.

Even though the approaches to WMD may differ among the Member States due to political reasons, the EU applies a consistent strategy based on multilateralism, the universality of International Treaties, multilateral cooperation through the participation in Non-proliferation Organizations, outreach programmes to third States and complementary use of other

¹⁴ ECJ, Case C-70/94, *Fritz Werner Industrie-Ansrichtungen GmbH v Federal Republic of Germany*, EU:C:1995:328, para. 10.

¹⁵ Council Regulation of 22 June 2000 No 1334/2000 (2000), *op. cit.*, p.2.

¹⁶ According to the Treaty on the Non-Proliferation of Nuclear Weapons, States which had built and tested nuclear weapons by 1967 are considered Nuclear Weapons States. In the EU only the UK and France fall within this category.

¹⁷ VAN HAM Peter, *Branding European Power*, Place Branding, Vol. 1, No. 2 (2005), pp. 122-126, p. 122.; ANTHONY Ian and GRIP Lina, *Strengthening the European Union’s future approach to WMD non-proliferation*, SIPRI Policy Paper 37/2013, 52 p., available at www.sipri.org/sites/default/files/files/PP/SIPRIPP37.pdf (accessed 28 August 2017).

available diplomatic instruments and financial resources to enlarge impact and effectiveness.

Taking the dual-use control Regulation as an example, this paper aims at showing the ways in which the EU addresses the WMD proliferation threat by taking advantage of a wide spectrum of activities, that encompass effective multilateralism (part II), cooperation with key IO (part III) and a unified external action in the frame of dual-use goods and chemical, biological, radiological and nuclear (CBRN) capacity-building programmes (part IV). Indeed, it has been recognised by Member States, companies and academia that *‘the EU’s cooperation programmes are useful tools to strengthen export controls in third countries and (...) that EU export control legislation has a multiplier effect, as a number of countries have decided to base their system on the EU model’*.¹⁸

II. Convergence of the EU legislation with International Legal rules on WMD

The assimilation of goals between the EU and the most important International Legal regimes in the field of WMD became evident with the Common Position 2003/805/CFSP on the universalization and reinforcement of multilateral agreements in the field of non-proliferation of WMD and their means of delivery.¹⁹ In this Common Position, the Council stressed the EU’s aim to strengthen the observance of all main international treaties fighting against proliferation, showing the goals shared by the EU and the international community.

The EU has ever since pursued the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT),²⁰ the Convention for the Prohibition of Biological and Toxin Weapons (BTWC),²¹ the Convention for the Prohibition of Chemical Weapons (CWC)²², and the United Nations Security Council Resolution 1540 (UNSCR 1540),²³ which addresses the issue of non-State actors acquiring WMD. It also promoted the ratification of the Comprehensive Nuclear Test Ban Treaty.²⁴

¹⁸ European Commission - Commission Staff Working Document. *Strategic export controls: ensuring security and competitiveness in a changing world – A report on the public consultation launched under the Green Paper* COM(2011) 393, SWD(2013) [2013], p.5 http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150459.pdf (accessed 17 June 2017).

¹⁹ Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery, [2003], OJ L 302/34, p.34

²⁰ Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 729 UNTS 161; 7 ILM 8809 (1968); 21 UST 483.

²¹ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC), 1015 UNTS 163; 11 ILM 309 (1972).

²² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction (CWC), 1974 UNTS 45; 32 ILM 800 (1993).

²³ UN Security Council, Security Council resolution 1540, 28 April 2004, S/RES/1540 (2004).

²⁴ CREMONA Marise, *Values in EU Foreign Policy*, in Evans Malcolm and Koutrakos Panos (eds), “Beyond the Established Legal Orders: Policy interconnections between the EU and the rest of the world”, Oxford and Oregon, Hart Publishing (2011), pp. 275-317, p. 298.

By fostering the universality and full implementation of international rules among its members, the EU aims at strengthening its regional and international system of non-proliferation.²⁵ Both the EU's WMD and Global Security Strategies stress the importance of all States being bound by the same set of rules.²⁶

These Strategies show the multilateral mind-set underlying the EU's approach when they emphasize that '*a multilateralist approach to security, including disarmament and non-proliferation, provides the best way to maintain international order*'. The EU commits itself to '*uphold, implement and strengthen the multilateral disarmament and non-proliferation treaties and agreements*', and one of the ways stressed by the WMD Strategy to do that is having in place '*strong national and internationally-coordinated export controls*'. It is therefore no surprise that dual-use trade controls are an important component of the EU WMD Strategy and its complementary 2008 New Lines for Action.²⁷

In this context we find that the EU Council Regulation n° 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use goods converges with all main disarmament and non-proliferation treaties and contributes to their effectiveness.²⁸ This Regulation is a fundamental instrument, for it is grounded in EU law and it contributes in an important way to the overall EU non-proliferation efforts.²⁹

This common export control framework inspired by the main international texts, acts as a model for many third States³⁰ and constitutes one of the EU's mechanisms to prevent the proliferation of CBRN weapons, related materials, equipment and technology covered by relevant International Treaties and arrangements.³¹

A. Legally binding international rules

The EU's dual-use Regulation sets out the same obligations and commitments related to dual-use as those set out in NPT,³² the BTWC,³³ CWC³⁴ - including its control lists - and

²⁵ BLAVOUKOS Spyros, BOURANTONIS Dimitris and PORTELA Clara, *The EU and the non-proliferation of nuclear weapons: strategies, policies, actions*, London, Palgrave Macmillan (2015), 264p., p. 16-18.

²⁶ Chapter 2 of *Council - EU Strategy against proliferation of Weapons of Mass Destruction*, 15708/03 [2003].

²⁷ BAUER Sibylle, *WMD-related dual-use trade control offences in the European Union: penalties and prosecutions*, EU Non-Proliferation Consortium, Non-proliferation papers, No. 30/July, 2013a, 16 p., p.1, available at www.sipri.org/sites/default/files/EUNPC_no-30.pdf, accessed 28 August 2017).

²⁸ The 2003 EES had already made strengthening the export control policies and practices 'within the EU's borders and beyond a priority.' Par. 19 of *Council - EU Strategy against proliferation of Weapons of Mass Destruction*, 15708/03 [2003].

²⁹ ANTHONY Ian, *The role of the EU in WMD non-proliferation*, in Busch Nathan E. and Joyner Daniel H. (eds), "Combating Weapons of Mass Destruction: the future of international non-proliferation policy", Athens and London, The University of Georgia Press (2009), pp. 197-221, p. 201.

³⁰ *European Commission - Commission Staff Working Document*, COM(2011) 393, SWD(2013) [2013], *op. cit.*, p. 5.

³¹ Council Regulation of 5 May 2009 No 428/2009 [2009] OJ L 134/1.

³² Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 729 UNTS 161; 7 ILM 8809 (1968); 21 UST 483.

³³ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC), 1015 UNTS 163; 11 ILM 309 (1972).

³⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction (CWC), 1974 UNTS 45; 32 ILM 800 (1993).

the UNSCR 1540,³⁵. This Resolution was approved under chapter VII of the UN Charter, which means that coercive measures could be enforced against those States who do not comply with it.³⁶

Even if it does not address the EU, emphasis should be put on UNSCR 1540, since over the past decade it has become the reference text for the establishment and enhancement of strategic trade controls.³⁷ In its first report on the implementation of the UNSCR1540, right after its adoption by the UN Security Council in 2004, the EU gathered all the legal provisions that shared a common approach to tackle the issues of the UNSCR1540. It insisted on the idea that the EU *'places particular emphasis on a policy of reinforcing compliance with the multilateral treaty regime'* since for the multilateral treaty regime to remain credible *'it must be made more effective'*.³⁸ As a result of this Resolution, dual-use export controls have been prioritized in the EU's budget that was assigned to partly fund the implementation of the EU WMD Strategy.³⁹

Member States easily agreed to adhere to all main multilateral Non-proliferation legal Treaties, as they were compatible with EU priorities and they were not imposing any strict additional measures.⁴⁰ Even more so, since the aforementioned Treaties and Resolutions provide the worldwide principles that establish the rationale for WMD-related dual-use controls, these principles enjoy a strong level of consensus.⁴¹

B. Non-binding international rules

However, as stated in the Regulation, the European common system of dual-use controls does not only ensure that international treaties are complied with, but also that political commitments made within the International Export Control Regimes are respected.⁴²

Export Control Regimes are informal arrangements between groups of States who join their efforts in harmonising national export controls on dual-use items related to WMD.⁴³

³⁵ UN Security Council, Security Council resolution 1540, 28 April 2004, S/RES/1540 (2004).

³⁶ Ibid.

³⁷ BAUER Sibylle, *Arms trade control capacity building: lessons from dual-use trade controls*, SIPRI Insights on Peace and Security, No. 2013/2, 2013b, 20 p., pp.6-8, available at www.sipri.org/sites/default/files/files/insight/SIPRIInsight1302.pdf (accessed 28 August 2017).

³⁸ *Presidency of the EU - European Union Report on the implementation of the UNSCR 1540*, October [2004], p.4, http://trade.ec.europa.eu/doclib/docs/2005/january/tradoc_121151.pdf (accessed 28 August 2017).

³⁹ *European External Action Service – Report on EU support to the full and universal implementation of UN Security Council Resolution 1540 (2004)*, Ares(2016)2646123 [2016], p.5, https://eeas.europa.eu/sites/eeas/files/eu_support_to_1540.pdf (accessed 28 August 2017).

⁴⁰ ANTHONY Ian and GRIP Lina (2013), *op. cit.*, pp.4-5.

⁴¹ BAUER Sibylle (2013a), *op. cit.*, p.9.

⁴² Ibid.

⁴³ JOYNER Daniel, *Non-Proliferation Export Controls. Origins, challenges, and Proposals for Strengthening*, London, Routledge, (2006), 1st ed., 254 p., pp. 7-15.

Their members are more or less like-minded States and they do not seek universal participation.⁴⁴ Even if their guidelines are non-binding, these voluntary *forums* play an important role on the definition of the control lists observed by the EU. While dual-use items are freely transferable within the EU,⁴⁵ certain items need an authorization to be exported outside the Union. These items are listed with reference to the international export control regimes. Annex I of the EU Regulation implements internationally agreed dual-use controls including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG) and the Australia Group.⁴⁶

All these international regimes are the most important voluntary rulemaking bodies in the field of sensitive trade. Consequently, while the Wassenaar Arrangement promotes transparency and responsibility in dual-use goods transfers (and conventional arms),⁴⁷ the MTCR seeks limiting the proliferation of missile technology;⁴⁸ the NSG guarantees that nuclear trade is not diverted to unsafeguarded nuclear activities;⁴⁹ and the Australia Group focuses on the harmonisation of export controls of chemical and biological items.⁵⁰

All these regimes have experienced an expansion in their scope and in their relevance: although they started off as groups that offered control list definitions, they slowly expanded their action to offering guidelines, best practice manuals and other activities regarding trade control knowledge management.⁵¹

In spite of not being binding, export control regimes play such a fundamental role in the definition of the items included in the EU's control lists, that they have become compulsory to all Member States. The way in which the Regulation implements these binding and non-binding rules is by incorporating their internationally agreed dual-use control lists in its Annex I. The list of controlled goods incorporated into the EU Regulation, is also used as a reference by third States such as Switzerland, Singapore or Taiwan.⁵²

⁴⁴ ANTHONY Ian and GRIP Lina (2013), *op. cit.*, pp.4-5.

⁴⁵ There is an exception: for dual-use items listed in Annex IV of an authorisation shall be required for intra-Community transfers.

⁴⁶ Annex I, Council Regulation of 5 May 2009 No 428/2009, p. 12

⁴⁷ More on the Wassenaar Arrangement: LIPSON Michael, *The Wassenaar Arrangement: Transparency and restraint through trans-governmental cooperation?*, in Joyner Daniel (ed), "Non-proliferation export controls. Origins, challenges, and proposals for strengthening", London, Routledge (2006), pp. 49-74, p. 50.

⁴⁸ More on the MTCR: JONES Scott, *Emptying the haunted air: the current and future missile control regime*, in Joyner Daniel (ed), "Non-proliferation export controls. Origins, challenges, and proposals for strengthening", London, Routledge (2006), pp. 75-99, p. 78.

⁴⁹ More on the Australia Group: KELLE Alexander, *CBW Export controls: towards regime integration?*, in Joyner Daniel (ed), "Non-proliferation export controls. Origins, challenges and proposals for strengthening", London, Routledge (2006), pp. 101-119, p. 104.

⁵⁰ ANTHONY Ian, ECKSTEIN Susanna and ZANDERS Jean-Pascal, *Multilateral military-related export control measures*, in "SIPRI Yearbook 1997: Armaments, Disarmament and International Security", Oxford, Oxford University Press (1997), pp. 345-363, p. 348.

⁵¹ BAUER Sibylle and MIĆIĆ Ivanna, *Controls on security-related international transfers*, in "SIPRI Yearbook 2010: Armaments, Disarmament and International Security", Oxford, Oxford University Press (2010), pp. 451-461, p. 449.

⁵² Conversations held by the author with Swiss Export Control Officers, Bern, 18 May 2015.

In conclusion, European legislation takes into account and converges with all main Disarmament and Non-proliferation Treaties, while also being in line with all the main voluntary export control regimes.

Well aware of the threats that the constant science and technology advances may pose, the Global Security Strategy points out that *‘the EU must also modernise its policy on export control for dual-use goods’*. Thus, escaping from any form of complacency, in September 2016 the European Commission adopted a proposal for a modification of the export control of dual-use items regulation.⁵³ While the European Parliament prepares a position on the proposal, it seems relevant to underline that this recast seeks to strengthen the existing export control system by introducing some substantial changes. It proposes to include, *inter alia*, stricter controls for the export of surveillance technology; a more ‘human dimension’ in terms of security; the concept of ‘outreach’ in regard to third countries or the ever-present debate on intangible technology transfers.⁵⁴ The legal basis of the proposed Regulation will continue to be Article 207 TFEU, by virtue of which, dual-use goods trade must be based on common principles while observing Member States’ privileges and prerogatives in the security field.

Regardless of the outcomes achieved by the adopted Regulation, it seems obvious that the EU legislation for the control of dual-use goods is a living regime which will continue to be updated. This continuous adaptation is possible through the updating of the Regulation’s provisions, approving new versions of the text that take into account the reports on science and technology advances presented to the EU from exporters and the industry. As mentioned above, the EU also takes into account the control lists agreed at the heart of the relevant multilateral non-proliferation regimes and export control arrangements.

C. Strengths and weaknesses of the EU’s multilateralism

This ‘effective multilateralism’ is one of the ways in which the EU is preventing the spreading of WMD. In the words of Federica Mogherini: *‘The EU will strongly support the expanding membership, universalization, full implementation and enforcement of multilateral disarmament, non-proliferation and arms control treaties and regimes. We will use every means at our disposal to assist in resolving proliferation crises, as we successfully did on the Iranian nuclear programme’*.⁵⁵

⁵³ Commission – Proposal for a Regulation of the European Parliament and of the Council setting up a Union regime for the controls of exports, transfer, brokering, technical assistance and transit of dual-use items (recast), COM(2016) 616 final, Brussels 2016/0295 (COD), [2016].

⁵⁴ More on the Commission’s proposal to recast the EU dual-use regulation: *European Parliament – Briefing EU Legislation in Progress: Review of dual-use export controls*, Second Edition, 30 January [2017] [www.europarl.europa.eu/RegData/etudes/BRIE/2016/589832/EPRS_BRI\(2016\)589832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589832/EPRS_BRI(2016)589832_EN.pdf) (accessed 28 August 2017).

⁵⁵ *European External Action Service* [2016], *op. cit.*

However, in order to effectively handle this multilateralism, the EU still has to improve its internal coordination skills. Over the past few years, the EU has been trying to gather all Member States' positions in view of adopting a unified approach which could be presented at review conferences and regime meetings. It has even established working groups that deal with WMD non-proliferation⁵⁶ to manage the collective contributions to multilateral processes. It can be seen as a sign of improvement that the EU is formulating common positions before attending certain important meetings.⁵⁷ Nevertheless, the simultaneous participation of individual sovereign EU members or the still irreconcilable perspectives of certain EU countries regarding European nuclear weapons States are some of the challenges that still need to be faced before reaching an even more successful multilateralism.⁵⁸

The interactions between the EU and Iran over the latter's nuclear programme, in spite of not being fully satisfactory from a European perspective, did show a stronger solidarity among EU Member States than previous similar occasions.⁵⁹ These moves can be regarded as an example of steady improvements towards a deeper cohesion.

In any case, it is undeniable that the strength and legitimation that the EU enjoys when acting as a unique actor is more powerful than the impact of the Member States' individual efforts. This, which has been referred to as the 'politics of scale',⁶⁰ allows for the EU to push certain issues in the international agenda and slowly consolidate its role as a global actor in the non-proliferation of WMD.

III. Assimilation of EU goals with WMD International Organisations objectives

The EU also works against the proliferation of WMD at an external level by taking an active part in all the main International Organisations (IO) in this field. Since the adoption of the 2003 WMD Strategy, the EU has focused a large part of its efforts on the strengthening of International key institutions within the non-proliferation and disarmament regime.⁶¹

⁵⁶ Working Party on Non-Proliferation (CONOP) is a group of member states that contributes to ensuring the implementation of international agreements. See: www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-non-proliferation/ (accessed 19 June 2017).

⁵⁷ In the frame of the BWC it is common to find such acts: Council Common Position 2006/242/CFSP of 20 March 2006 relating to the 2006 Review Conference of the Biological and Toxin Weapons Convention (BTWC), [2006] OJ L 88/65, p. 2.

⁵⁸ ZWOLSKI Kamil, *Institutions and epistemic networks in the EU's non-proliferation governance*, in Blavoukos Spyros, Bourantonis Dimitris and Portela Clara (eds), "The EU and the non-proliferation of nuclear weapons: strategies, policies, actions", London, Palgrave Macmillan (2015), pp. 205-223, p. 208.

⁵⁹ It proved a consensus that was never achieved during the Iraq crisis, for instance. ANTHONY Ian (2009), *op. cit.*, pp.202-205.

⁶⁰ Joining forces to create a larger impact as a united group than as single States, GINSBERG Roy H., *Foreign policy actions of the European Community: the politics of scale*, London, Bolder Rienner (1989), 1st ed., 203 p.

⁶¹ KIENZLE Benjamin, *The irony of history: European responses to the contested evolution of the nuclear non-proliferation and disarmament regime*, in Barbé Esther, Costa Oriol and Kissack Robert (eds), "EU policy responses to a shifting multilateral system", Houndmills Basingstoke Hampshire, Palgrave Macmillan (2016), pp. 25-48, p. 39.

The assimilation of the EU goals with the aims of the IAEA, the OPCW, and other bodies dedicated to counter the spread of WMD has been consistent over time.⁶² This is evidenced by the EU's thorough involvement in the IO activities, by the financial contributions made and by the technical support offered to these key partners. The objectives on both sides of the partnership were the same: preventing the proliferation of WMD programmes, strengthening the implementation of International Treaties, guaranteeing an effective multilateralism and ensuring a stable environment.⁶³

A. Differences in the goals

The only difference between the objectives pursued by the EU and the ones sought by the universal IOs is that, originally, the Europeans focused their attention in the periphery of the EU. While the multilateral IOs did not have preferences for any region in particular, the EU decided to begin its WMD non-proliferation efforts, preferably with its neighbouring countries. The European Commission thus financed an extensive border management assistance program in States around the borders of the EU in collaboration with the OPCW or the IAEA Nuclear Security Program.⁶⁴

However, this regional preference changed due to the fact that security threats could originate in any region of the world and could have an impact for the Union's stability. In fact, some of these threats could even have an origin in the EU, if certain dual-use goods left its borders without the required authorizations... Hence, the importance given to dual-use export controls. Given the increasingly globalized market in which more sophisticated production processes take place, the EU widened its WMD non-proliferation objectives to include a universal perspective, rather than just stick to a neighbouring approach.⁶⁵

B. EU's involvement and participation

The majority of the EU's support measures to IOs tend to be highly technical and are only implemented with the voluntary collaboration of the partner institution.⁶⁶

The array of activities financed by the EU has been - and continues to be - very broad: they range from regional workshops or fostering the universalisation of International Treaties, to verification visits or expert inspections in the field.

⁶² ANTHONY Ian (2009), *op. cit.*, pp.213-216.

⁶³ HERTWIG Jana (2014), *op. cit.*, p. 232.

⁶⁴ ANTHONY Ian, (2009), *op. cit.*, pp.213-216.

⁶⁵ FIOTT Daniel and PRINZEMAN Katherine, *The Arms Trade Treaty and the Control of Dual-Use Goods and Technologies: What can the European Union's Export Control Regime Offer?*, Institute for European Studies, Vrije Universiteit Brussel, IES Working Paper 1/2013, 25 p., p.8, available at www.ies.be/files/15%20mar%202013%20The%20Arms%20Trade%20Treaty%20and%20the%20Control%20of%20Dual.pdf (accessed 28 August 2017).

⁶⁶ KIENZLE Benjamin (2016), *op. cit.*, p.39.

Over the past ten years, the European Council has adopted over 20 Council Decisions (previously known as ‘Joint Actions’)⁶⁷ in the field of WMD non-proliferation. Most of the funding was used for the Nuclear Security Fund of the IAEA,⁶⁸ but also for the reinforcement of the role of the BTWC,⁶⁹ to support the OPCW’s activities,⁷⁰ and to assist the implementation of UNSCR 1540.⁷¹

Council Decisions are actions limited in time during which EU Member States provide experts, financial resources, equipment and/or know-how to reach the specific objectives set out by the Council. Council Decisions establish direct and specific initiatives and they generally entail considerable financial allocations from both the EU budget and Member States’ budgets.⁷² They are implemented in collaboration with the IOs creating joint mechanisms in which the EU generally supports the activities from a financial perspective while the IOs execute the Decisions.⁷³

Relationships and synergies fluctuate and vary depending on the Organisation the EU might be working with. This demonstrates the EU’s capacity for influence. Its interests and priorities are reflected in the scope of action chosen to allocate its budget.

The commitment that the EU has with the IAEA is perhaps one of the most visible nowadays. Although the EU has always worked actively to prevent States from acquiring nuclear weapons capabilities, this compromise has become more visible due to the Iran talks, which concluded in the winter of 2013. The Joint Comprehensive Plan of Action (JCPOA) on

⁶⁷ After the adoption of the Lisbon Treaty in 2009, the term ‘Joint Action’ was replaced by the term ‘Council Decision’.

⁶⁸ KIENZLE Benjamin, *A European contribution to non-proliferation? The EU WMD Strategy at ten*, International Affairs, Vol 89, Issue 5 (2013), pp. 1143-1159, p. 1144.

⁶⁹ Examples of Joint Actions/Council Decisions supporting the BWC can be found here: *BWC Action – The BWC and the European Union*, www.un.org/disarmament/geneva/bwc/bwc-action/bwc-action-the-bwc-and-the-european-union/ (accessed 28 August 2017).

⁷⁰ Organisation for the Prohibition of Chemical Weapons, *The OPCW and the European Union*, The Hague, Brochures OPCW, 2013, 16 p., available at www.iiss.org/-/media/Documents/Events/EU%20Conference/2013/EU-OPCW%20brochure.pdf?la=en (accessed 28 August 2017).

⁷¹ GRIP Lina, *The role of the European Union in delivering Resolution 1540 implementation assistance*, EU Non-Proliferation Consortium, Non-Proliferation Papers, No.22/October, 2012, 18 p., available at www.sipri.org/sites/default/files/EUNPC_no-22.pdf (accessed 28 August 2017).

⁷² See: www.un.org/disarmament/geneva/bwc/bwc-action/bwc-action-the-bwc-and-the-european-union/ (accessed 28 August 2017).

⁷³ The activities foreseen in these Council Decisions include awareness rising to States not Party in the International Treaties, training of customs officials, industry outreach, regional workshops of emergency response and regional cooperation, etc. Organisation for the Prohibition of Chemical Weapons, (2013), *op. cit.*, p.4. Examples of such Council Decisions are Council Decision (CFSP) 2016/2383 of 21 December 2016 on the Union support for the International Atomic Energy Agency activities in the areas of nuclear security and in the framework of the implementation of the EU Strategy against the Proliferation of Weapons of Mass Destruction, [2016] OJ L352/74; or Council Decision (CFSP) 2015/259 of 17 February 2015 in support of activities of the OPCW in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction, [2015] OJ L43/14.

Iran's nuclear programme was part of the E3+3 programme (meaning the three EU Member States France, Germany and the UK, together with China, the Russian Federation and United States) and it contributed to a stronger link between the EU and the IAEA.⁷⁴

Nevertheless, bilateral cooperation between the IAEA and the EU goes further in time and way beyond the Iranian issue. The original cooperation on safeguards was steadily widened to include technical assistance instruments, Nuclear Safety Cooperation, monitoring activities and several lines of action funded by the EU's Common Foreign and Security Policy (CFSP).⁷⁵ There is a simultaneous participation of the EU and its Member States when collaborating with IO's such as the IAEA. As previously mentioned, in order to avoid possible ruptures between its NWS members and the NNWS, the EU focuses on supporting regional and interregional projects which generally address nuclear safety and non-proliferation rather than disarmament. As defended by L.E. Lundin, the actual and potential influence of the EU interacting with the IAEA should not be underestimated, for its capacity to promote political dialogue and its informal outreach skills in Vienna have improved considerably over the past years.⁷⁶

In the OPCW case, though, the EU's involvement is different. The EU tends to fund the Organisation's activities as a financial provider, while the OPCW's own experts are the technical providers. In other words, the EU does not generally allocate human resources or expertise at the service of the partner institution, which rather designates its staff as project implementers.⁷⁷ An infamous example of such assistance was the provision of funds to the OPCW special missions in Syria when in 2015, in the midst of Syria's civil war, a group of experts undertook a Fact Finding Mission and set in motion the Joint Investigative Mechanism with the UN.⁷⁸

Unlike the nuclear and chemical regimes, the BTWC does not count upon an International Organization which would permit the EU to take part. Therefore, the EU's work mainly focuses on universalizing the efforts and raising awareness among non-member States. Nonetheless, Council Decisions in the field of biological and toxin weapons are channelled through the Geneva Branch of the United Nations Office for Disarmament Affairs (UNODA), which is the implementing agency that aims at assisting the work of the BTWC

⁷⁴ More on the IAEA and the EU: WOUTERS Jan, CHANÉ Anna-Luise, ODERMATT Jed and RAMOPOULOS Thomas, *Improving the European Union's status in the United Nations and the UN System: an objective without a strategy?*, in Kaddous Christine (ed), "The European Union in International Organisations and Global Governance", Oxford, Hart Publishing (2015), pp.45-76, p. 68.

⁷⁵ LUNDIN Lars-Erik, *The European Union, the IAEA and WMD non-proliferation: unity of approach and continuity of action*, EU Non-Proliferation Consortium, Non-Proliferation Papers, No.9/February, 2012, 15 p., pp.7-8, available at www.files.ethz.ch/isn/142128/EUNPC_no9%2009.pdf (accessed 28 August 2017).

⁷⁶ Ibid., p. 3.

⁷⁷ ANELLI Dominique, *The role of the OPCW in the Global Chemical Disarmament: lessons learned from Syria*, Notes of the course "El papel clave de la química en la seguridad nacional e internacional", Universidad Complutense de Madrid, 12 July (2017).

⁷⁸ The EU provided €4,6 million to the OPCW special missions in Syria. See: https://ccas.europa.eu/headquarters/headquarters-homepage/24893/organisation-prohibition-chemical-weapons-opcw-special-missions-syria_en (accessed 28 August 2017).

Implementation Support Unit (ISU).⁷⁹ As stated at the 8th Review Conference of the BTWC in November 2016, the EU considers the Convention as ‘*the cornerstone of efforts to prevent biological agents and toxins from ever being developed or used as weapons*’. Thus, it will continue to provide financial resources to support BTWC core activities.⁸⁰

In the same vein, we find the EU’s involvement in the UNSCR 1540. Stressing the assimilation of the EU WMD Strategy with the overall objective of the Security Council’s Resolution, the last Council Decision - adopted in May 2017 - establishes a set of measures which reflect the actions taken in the field of the BTWC, *i.e.* promoting implementation of the Resolution, raising awareness amongst policy-makers and other stakeholders, contributing to achieving higher levels of reporting, etc.⁸¹

Together with these IOs, the EU has also supported other informal regimes such as the Proliferation Security Initiative (PSI)⁸² or the aforementioned export control regimes. In fact, the European Commission is a member of the Australia Group together with the Member States; it has observer status at the NSG and takes part at the Wassenaar Arrangement and MTCR within the delegations of the EU Presidencies.⁸³

In all these cases, the EU is a major supplier of managerial skills, technical expertise and financial resources addressed to WMD issues. However, the type of contribution or participation depends on the case... It can be inferred that when there are already standing and solid IOs in place, the EU’s collaboration seems to be more frequent and more effective. Hence, institutionalized structures such as the IAEA or the OPCW, have received more assistance than other *sui generis* international bodies like the BTWC Implementation Support Unit (in absence of a proper IO) or the 1540 Committee.

Regimes that lack a solid International Organisation, involve more practical problems and therefore, a harder approach. Under such circumstances, the EU needs to employ more creative ways to support the implementation of International rules and the political, financial and technical support is not as effective.⁸⁴ Despite the fact that this does not prevent

⁷⁹ HUNGER Iris and ZMORZYNSKA Anna, *Verifying and demonstrating compliance with the BTWC*, EU Non-Proliferation Consortium, Non-Proliferation Papers, No.5/December, 2011, 14 p., pp.9-11, available at www.sipri.org/sites/default/files/irishungerandannazmorzynska4ed780ce74eb3.pdf (accessed 28 August 2017).

⁸⁰ The EU and its Member States contributed with more than 6 million euros from the EU budget to support the BTWC implementation. BYLICA Jacek, *EU general statement at the Eighth Review Conference of the BTWC*, 8th Review Conference of the BTWC, 8 November, Geneva [2016] https://eeas.europa.eu/headquarters/headquarters-homepage/16044/8th-review-conference-btwc-eu-statement-outcome-eighth-review-conference-biological-and-toxin_en (accessed 10 September 2017).

⁸¹ Council Decision 2017/809 of 11 May 2017 in support of the implementation of United Nations Security Council Resolution 1540 (2004) on the non-proliferation of weapons of mass destruction and their means of delivery, [2017] L121/39, p. 2.

⁸² More on the PSI: HOLMES James. R. and WINNER Andrew C., *The Proliferation Security Initiative*, in Busch Nathan E. and Joyner Daniel H. (eds), “Combating Weapons of Mass Destruction: the future of international non-proliferation policy”, Athens and London, The University of Georgia Press (2009), pp. 139-155.

⁸³ MICARA Anna Giulia (2012), *op. cit.*, p. 584.

⁸⁴ ANTHONY Ian and GRIP Lina (2013), *op. cit.*, p. 21.

the EU from taking part in their activities, the lack of interlocutors, the absence of an institutionalized body or the insufficient guidelines, do make it harder for the Union to keep a fluent cooperative relationship with more informal institutions.

In spite of having a unified participation in the main IOs, and in spite of sharing the same goals, there is still leeway for EU Member States to decide how to reach those objectives in terms of export controls. In other words, the EU dual-use legislation presents one main flaw, which has not been observed by the aforementioned Commission's proposal to recast the text: it still relies on Member States authorities' when it comes to dual-use items control procedures.

Sanctions and penalty systems are one of the areas where the lack of uniformity in the implementation becomes most obvious. Since criminal Law falls into the national competence of the Member States, the provisions foreseen by each country for the case of violating the Dual-use Regulation or for breaching the embargoes, is affected by the State's national legal traditions.⁸⁵ The European legal framework for prosecuting dual-use offences is the result of combining EU law and national laws. As set out in Article 24 of the Regulation, Member States will '*lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation*'. The only requirements specified by the EU text is that these penalties must be effective, proportionate and dissuasive. The effect of such unspecific wording was that while some States - like Germany - foresee prison sentences of up to 15 years for export control violations (the highest in the EU), other States - such as Ireland - foresee a maximum prison sentence of 12 months.⁸⁶

These permitted differences among national authorities may also allow for inequivalent requirements regarding licensing purposes. Even though, this has not yet caused any rupture in the EU's multilateral projection, this degree of flexibility, if incremented, could foster a certain lack of coherence⁸⁷ and would perpetuate the inconsistency of the EU regime for export control of dual-use goods.⁸⁸

IV. Unified EU External Action

The EU is a solid provider of technical cooperation to third States in the field of arms and dual-use export controls and chemical, biological and nuclear risks prevention. It develops

⁸⁵ BAUER Sibylle, *Designing and implementing appropriate and effective penalties for dual-use trade control offences*, in MICHEL. Quentin JAN-KOWITSCH-PREVOR Odette PAILE-CALVO Sylvain (eds), "Controlling the trade of strategic goods. Sanctions and penalties", European Studies Unit, Université de Liège (2016), pp.174-185, p.175.

⁸⁶ BAUER Sibylle (2013a), *op. cit.*, p.5.

⁸⁷ WETTER Anna, *Enforcing European Union Law on Exports of Dual-Use goods*, SIPRI Research Report, 24, Oxford/New York, Oxford University Press for Stockholm International Peace Research Institute (2009), 1st ed., 168 p.

⁸⁸ MICARA Anna Giulia (2012), *op. cit.*, pp.578-593.

and promotes common standards that have been previously agreed on an internal level.⁸⁹ The EU's approach on this point ranges from '*assisting third countries in drafting, updating, and implementing, as appropriate, relevant and administrative measures aiming at establishing an effective system of conventional arms export controls*' to '*assisting third countries in the training of licensing and enforcement officers to ensure adequate implementation and enforcement of arms export controls*'.⁹⁰

The 2003 ESS had already explicitly stated that strengthening the export control policies and practices '*within the EU's borders and beyond*' was a priority. It also acknowledged the need to coordinate those efforts with partners in order to guarantee successful international co-operation.⁹¹

A year later, the 2004 UNSC Resolution reiterated the importance of '*including international cooperation when necessary*' to develop and maintain appropriate effective border controls and law enforcement efforts to tackle WMD threats. This UNSCR 1540 did not only oblige States to '*take and enforce measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological (CBN) weapons and their means of delivery, including by establishing appropriate controls over related materials*', but also invited States '*in a position to do so*' to '*offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions*'.⁹²

Since then, the EU has developed the world's second biggest dual-use trade control capacity-building programme, now involving not only European States but also countries in Africa, Asia and the Middle East.⁹³

A. P2P Export Control Programme for Dual-Use

The EU's dual-use export control program is an institutional method that -so far- has allowed for a unified external action. Over the last decade, the EU has funded an 'Outreach Programme on Dual-Use Export Controls' for third countries. It is therefore a project whose mission is to facilitate the implementation of UNSCR 1540. Since the origins of the programme in 2004, when the capacity-building activities were implemented in South-Eastern European States,⁹⁴ the programme has become increasingly important, reaching a

⁸⁹ However, in the biosafety and biosecurity area, there is a lack of consensus at an internal level: ANTHONY Ian and GRIP Lina (2013), *op. cit.*, p.37.

⁹⁰ Council Decision (CFSP) 2012/711 of 19 November 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles of criteria of Common Position 2008/944/CFSP, [2012] L321/62, p. 2.

⁹¹ Council - EU Strategy against proliferation of Weapons of Mass Destruction, 15708/03 [2003].

⁹² Subsequent UNSC Resolutions (i.e. UNSC Resolution 1810 of 2010; UNSC Resolution 1977 of 2011) insisted on the implementation assistance. Available here: www.un.org/en/sc/1540/resolutions-committee-reports-and-SC-briefings/security-council-resolutions.shtml (accessed 28 August 2017).

⁹³ The first one being the US Programme. BAUER Sibylle (2013a), *op. cit.*, p.6-8.

⁹⁴ BAUER Sibylle, DUNNE Aaron and MIĆIĆ Ivana, *Strategic trade controls: countering the proliferation of weapons of mass destruction*, in 'SIPRI Yearbook 2011: Armaments, Disarmament and International Security', Oxford, Oxford University Press (2011), pp. 431-446, p. 438.

budget of EUR 3 million for the 2013-2014.⁹⁵ The last expansion of the project took place in 2016, marking the renaming and rebranding of the programme which is currently known as the EU P2P (Partner-to-Partner) Export Control Programme for Dual-Use Goods.⁹⁶ The EU P2P Programme constitutes an extraterritorial act which has been deployed in more than thirty third countries from six regions.⁹⁷

In line with the EU Global Security Strategy and the WMD Strategy, the EU P2P dual-use programme aims at enhancing the effectiveness of export control systems of dual-use items so as to combat the proliferation of WMD, taking into consideration the balance between security and economic interests.⁹⁸ This programme aims to ‘export’ the EU *acquis* to partner countries.⁹⁹

The P2P Export Control Programme for Dual-Use Goods is managed by the European Commission (specifically the Directorate General for International Cooperation and Development, DEVCO) with support from the European External Action Service (EEAS), under the Instrument contributing to Stability and Peace (IcSP) long-term programme.¹⁰⁰ The IcSP is one of the main financial instruments of the EU’s external policy¹⁰¹ and it finds its *raison d’être* in supporting peace and security initiatives in the EU’s partner countries. In force since 2014, IcSP came to substitute the ‘Instrument for Stability’ (IfS), which had been established by Regulation n° 1717/2006.¹⁰²

Since there is not a fully comparable structure to the EU in the International Community, the EU started to export its model on a country-by-country basis. However, States would rather not limit their dual-use imports and exports. The underlying reason for this approach is fairly simple: no country is willing to restrict neither its market nor its industrial development possibilities.¹⁰³

⁹⁵ European Commission – Commission Staff Working Document Impact Assessment. *Report on the EU Export Control Policy Review Accompanying the document Proposal for a Regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (Recast)*, SWD/2016/0315 final - 2016/0295 (COD) [2016] http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc_155008.pdf (accessed 28 August 2017).

⁹⁶ VISKI Andrea, VARDULAKIS George et al., *EU P2P Newsletter: Issue N. 1*, Publications Office of the European Union, 2016, 15 p., available at <http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100628/kjad16001enn.pdf> (accessed 28 August 2017).

⁹⁷ European External Action Service – *Report on EU support to the full and universal implementation of UN Security Council Resolution 1540 (2004)* [2016], *op. cit.*, p. 5.

⁹⁸ See: *The P2P Export Control Programme*, <https://export-control.jrc.ec.europa.eu/Home/Dual-use-trade-control> (accessed 19 August 2017).

⁹⁹ VAN DER MEER Adriaan and LEHOFFER Wolfgang, *EU Export Control Outreach: Quo Vadis?*, in Michel Quentin and Lehofer Wolfgang (eds), “Incentives of Europe for Non-Proliferation Outreach”, Liège, European Studies Unit, Université de Liège (2017), pp.63-75, p. 63.

¹⁰⁰ VISKI Andrea VARDULAKIS George et al. (2016), *op.cit.*, p.14.

¹⁰¹ A EUR 2.338.719.000 budget to execute in the 2014-2020 period.

¹⁰² European Parliament and Council Regulation of 15 November 2006 No 1717/2006 establishing an Instrument for Stability, [2006] OJ L 327/1, p. 2.

¹⁰³ FIOTT Daniel and PRINZEMAN Katherine (2013), *op. cit.*, p. 21.

In this context, the EU began offering its outreach programme on a regional basis. Through approaching groups of States instead, the EU fosters greater confidence. Unfair competition seems less likely if all parties set their dual-use controls at the same time. Although there are further improvements that can be brought to several aspects of this approach (tailored approaches are always more accurate), this regional strategy addressing third States willing to implement harmonized practices is an obvious example of extraterritorial application of EU policies.

While the project was originally fully implemented by the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA),¹⁰⁴ nowadays the EU P2P is implemented by various EU Member States' agencies. Together with BAFA, which is currently in charge with a project in Jordan and in Kazakhstan, we also find a consortium led by Expertise France focused on a global project and another one in South East Asia.¹⁰⁵ In total, about 200 experts from across the EU offer technical expertise based on their backgrounds. The activities generally take place in the third countries, and the EU experts implement legal workshops, training sessions, national seminars on the implementation of safety standards, etc.¹⁰⁶

B. CBRN CoE Initiative

As part of the measures foreseen by the IfS, the European Commission launched in 2010 the EU Chemical, Biological, Radiological and Nuclear Centres of Excellence Risk Mitigation Initiative (CBRN CoE). These Centres were established as a response to the insufficient institutional capacity of multiple countries to prevent chemical, biological, radiological and nuclear (CBRN) risks.¹⁰⁷

This initiative became the single most important measure of the long-term component of the IfS and has continued to expand over the past six years.¹⁰⁸ It includes the implementation of regional projects, some of which count with the participation of the P2P Dual-use Programme when they are dealing with the control of dual-use goods. An example of an on-going CBRN CoE Project that counts with the P2P Programme participation is 'Project

¹⁰⁴ ANTHONY Ian and GRIP Lina (2013), *op. cit.*, p.37.

¹⁰⁵ The consortium includes the French Ministry of Economy, Industry and Numerics, represented by the Export Control Office on Dual-Use Goods (SBDU), King's College London, the Swedish Inspectorate of Strategic Products, the Customs authorities of France and Belgium, the United Kingdom National Nuclear Laboratory and the University of Liège.

¹⁰⁶ Specific examples of EU P2P Dual-use trade control programme activities available in CHARATSIS Christos, LEHOFER Wolfgang, et al., *EU P2P Newsletter: Issue N.4*, Publications Office of the European Union, 2017, 43 p., available at https://export-control.jrc.ec.europa.eu/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntityId=2995&language=en-GB&PortalId=0&TabId=98 (accessed 28 August 2017)

¹⁰⁷ BRILL Louis-Victor, *The European Union CBRN Regional Centres of Excellence initiative*, in Meier Oliver (ed), "Technology transfers and non-proliferation: between control and cooperation", London, Routledge (2014), pp. 230-243, p. 232.

¹⁰⁸ PINXTEN Karel, *Can the EU's Centres of Excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU?*, Special Report, Interview by Carotti Rosmarie, 17/2014 February, 36 p., available at www.ecc.europa.eu/Lists/ECADocuments/INTERVIEW_PINXTEN_2015/Interview_Pinxten_01_2015.pdf (accessed 19 August 2017).

43', which consists in a two-year outreach programme on export control of dual-use goods in countries from six out of the eight regions where the initiative is currently present.¹⁰⁹

However, the scope of this Initiative is much broader than export controls, and confirms that a unified external action is possible. In the context of CBRN CoE, the EU undertakes capacity building projects addressed to strengthen other States' abilities to control sensitive research, dangerous waste management, safe laboratory codes of conduct, CBRN crisis management and other WMD non-proliferation issues affecting international peace and security.¹¹⁰

In sum, CoE aim to build on and expand regional expertise on CBRN issues, complemented as necessary by expertise from the EU and other regions. It is relatively usual to count on the involvement of IO's experts from the IAEA or the OPCW.¹¹¹ The formal implementing partner is the United Nations Interregional Crime and Justice Research Institute (UNICRI),¹¹² which contributes to the fact that this Initiative reach a higher level of legitimacy.¹¹³

In order to enhance institutional capacities, the EU works with civilian authorities, licensing institutions, customs officers, legal personnel, industry representatives, researchers, academia, non-governmental organisations and all stakeholders that may be relevant for the project. It is also worth stressing that partner countries and partner regions play a central role in the proposal of the scope, type and area of work for the EU-funded projects.¹¹⁴

Partner countries to this initiative range from neighbouring regions such as Northern Africa or South-Eastern Europe, to further regions like the Middle East or South-East Asia.¹¹⁵ This geographical focus reflects the EU's interest on becoming a global actor in the WMD non-proliferation and CBRN security.¹¹⁶ It shows its commitment to accept and share responsibility for addressing stability and security challenges with other partners.

The first two pilot projects delivered through the CoE initiative were implemented in 2011 in the South East Asia region. While the first focused on countering illicit trafficking of nuclear and radiological materials, the second project sought to the strengthening of the

¹⁰⁹ North Africa, South East Europe, Middle East, Easter Europe, Caucasus and Central Asia, Asia (China Region) and South East Asia. CBRN CoE, *Project 43: EU Outreach Programme 2015-17 on export control of dual-use goods*, www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/79/EU-Outreach-Programme-2015-17-on-export-control-of-dual-use-goods.aspx (accessed 19 June 2017).

¹¹⁰ See: CBRN Centres of Excellence: an initiative of the European Union, www.cbrn-coe.eu/default.aspx (accessed 19 June 2017).

¹¹¹ TRAPP Ralf, *The EU's CBRN Centres of Excellence Initiative after six years*, EU Non-Proliferation Consortium, Non-Proliferation Papers, No.55/February, 2017, 16 p., p.1, available at <https://nonproliferation.eu/web/documents/nonproliferationpapers/the-eu-s-cbrn-centres-of-excellence-initiative-aft-55.pdf> (accessed 19 August 2017).

¹¹² See: *United Nations Interregional Crime and Justice Research Institute* www.unicri.it (accessed 19 June 2017).

¹¹³ KIENZLE Benjamin (2013), *op. cit.*, p. 1157.

¹¹⁴ BAUER Sibylle, DUNNE Aaron and MIČIĆ Ivana (2011), *op. cit.*, pp.438-440.

¹¹⁵ MIGNONE Alicia, *The European Union's chemical, biological, radiological and nuclear Centres of Excellence Initiative*, EU Non-Proliferation Consortium, Non-Proliferation Papers, No.28/June, 2013, 12 p., pp.3-4, available at www.sipri.org/sites/default/files/EUNPC_no-28.pdf (accessed 19 August 2017).

¹¹⁶ TRAPP Ralf (2017), *op. cit.*, pp.1-6.

biosafety/biosecurity legislation and the enhancing of laboratory procedures.¹¹⁷ Following their successful results, more projects were proposed and implemented, to the point where nowadays there are 54 countries involved.¹¹⁸

CBRN CoE projects stand out for their comprehensive nature and their integrated approach. They work on the basis of the ‘all-hazard approach’ principle, which means that the CBRN CoE strives to reach a balance between tackling CBRN risks, regardless of their origin. CBRN risks can have natural causes (outbreaks of infectious diseases), accidental causes (human or technical mistakes cause a spill, a discharge or a leak of hazardous materials) or criminal causes (intentional acts with a malicious will such as an attack).¹¹⁹ Whatever the case, the approach of CBRN CoE projects is holistic as it aims at integrating all relevant aspects of addressing the partner’s needs.¹²⁰

V. Final considerations

Non-proliferation has become a permanent element of the external policy of the EU. With a complex legal framework, whose main exponents are the EU WMD Strategy and Federica Mogherini’s Global Security Strategy, the EU plays a very relevant role in the fight against proliferation.

The EU has the competencies and legislative powers that allow it to enforce Regulations like the one analyzed in this study *i.e.* Council Regulation n° 428/2009 which, while regulating in detail the international obligations stemming from the main International Treaties regarding dual-use goods controls, also stands out for making binding, for EU Member States, the control lists defined by informal *fora* like the Wassenaar Arrangement or the Australia Group. Thus, the EU’s legislative power, combining both supranational and intergovernmental elements, or its autonomous structures, are only a few reasons that allow to explain why this uniqueness has proved so hard to imitate by other parts of the world where these characteristics are lacking.

However, due to strong and unified international capacity-development programmes, the EU has become a recognized global actor in the dual-use goods control field and in the CBRN risk mitigation sector, which, in turn, make it a global actor in the non-proliferation of WMD.¹²¹

¹¹⁷ Ibid.

¹¹⁸ The list of projects that have been implemented since the origins of the Initiative is available at: www.cbrn-coe.eu/Projects.aspx (accessed 19 August 2017).

¹¹⁹ MIGNONE Alicia (2013), *op. cit.*, pp.3-4.

¹²⁰ BRILL Louis-Victor (2014), *op. cit.*, p.232.

¹²¹ *European Court of Auditors - Can the EU’s Centres of Excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU?*, Special Report no. 17, [2014], www.cca.europa.eu/Lists/ECADocuments/SR14_17/SR14_17_EN.pdf (accessed 17 June 2017).

It has been said that the EU tends to absorb and replicate the provisions of International Treaties rather than influencing the direction of the latter. Nevertheless, the fact that so many countries have voluntarily decided to get involved in the EU's initiatives and the steps they have proactively taken in view of enhancing their non-proliferation skills in light of P2P and CBRN CoE initiatives already proves the major power of influence of the EU's outreach programmes.

By setting export control standards on dual-use items and enhancing the resilience against WMD proliferation, the EU seeks to remain a reliable partner for third countries, while creating a mutually beneficial situation between them and the EU.

It seems clear that an integrated approach is needed when discussing the best ways to counter proliferation. Therefore, the EU handles the WMD proliferation threat from a multilevel perspective, taking advantage of a wide spectrum of actions: effective multilateralism, co-operation and a unified external action. This holistic mind-set seems to have worked so far. There are, however, many more instruments at the EU's disposal to address the root causes of proliferation *i.e.* instability, weak institutional structures, absence of human rights, poverty... Security is a precondition for development, and therefore the EU must strive to update its transversal approach to international peace and security. To put it in the WMD Strategy's words '*The more secure countries feel, the more likely they are to abandon programmes: disarmament measures can lead to a virtuous circle just as weapons programmes can lead to an arms race*'.

* * *

List of abbreviations

BTWC	Biological and Toxin Weapons Convention
CBRN	Chemical, biological, radiological and nuclear
CFSP	Common Foreign and Security Policy
CoE	Centres of Excellence
CWC	Chemical Weapons Convention
ESS	European Security Strategy
EU	European Union
IAEA	International Atomic Energy Agency
IcSP	Instrument contributing to Stability and Peace
IfS	Instrument for Stability
IO	International Organisations
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSG	Nuclear Suppliers Group
OPCW	Organisation for the Prohibition of Chemical Weapons
PSI	Proliferation Security Initiative
TC	Technical cooperation
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNSCR	United Nations Security Council Resolution
WMD	Weapons of mass destruction

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