



**COUNCIL OF
THE EUROPEAN UNION**

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CODUN 47
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NOTE

from : the General Secretariat of the EU

to : the Delegations

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Subject : Fight against the proliferation of weapons of mass destruction

- Mainstreaming non-proliferation policies into the EU's wider relations with third countries

Delegations will find attached the text setting on the EU policy as regards the non-proliferation element in the EU's relationships with third countries, adopted by the Council at its 17 November 2003 Session. The Council invited Council bodies to implement this policy.

EU policy as regards the non-proliferation element
in the EU's relationships with third countries

- Non-proliferation of WMD is a major concern for the EU and constitutes a fundamental element for the EU when it considers the decision of entering into negotiations with a third country or assesses the advisability of progressing towards a contractual relationship.
- As concerns mainstreaming non-proliferation policies into the EU's wider relations with third countries and in particular the inclusion of a "non-proliferation clause" in agreements with third countries:
 - a) Future mixed agreements: as a general rule, a "non-proliferation clause" should be included, as an essential element clause, along the lines of the text attached, in all future mixed agreements to be negotiated;
 - b) Existing mixed agreements: on any occasion of renewal or revision of such agreements, the EC and its Member States should aim at the insertion of the WMD non-proliferation clause. However, the EC and its Member States could propose an amendment of the agreement to the third party if specific WMD related concerns warranted such action. If no agreement can be reached on such proposed amendment, the EC and its Member States should examine the opportunity of appropriate measures, which could include denunciation of the agreement. In cases in which inclusion of a "non-proliferation clause" as an essential element is considered appropriate, negotiations could lead to:
 - a separate legally binding instrument between the Parties which may include a link to the overall Agreement; or
 - Amendment of the Agreement in question to introduce the clause.

A complete examination of existing mixed agreements might be engaged with a view to generalising as far as possible the essential clause and determining the way to do so.

- c) Community-only agreements, existing or still to be negotiated with third Countries, cannot include a "non-proliferation" clause for reasons linked to the Community's competences under the TEC. Where there exist Community only agreements of a general nature, and where neither a flanking mixed agreement exists nor is envisaged, the Council will consider the principle of introducing an essential non-proliferation element in the EU-third country relationship through the conclusion of a parallel instrument establishing a link with the EC agreement. This parallel instrument would contain a provision along the lines of the text attached.
- d) No Agreement: the Council will consider the cases of countries with which the Union has no contractual relations with a view to negotiating mixed agreements which would include the "non-proliferation clause" as an essential element.
- e) In cases of non compliance by one of the Parties to the agreement with the commitments undertaken under the non-proliferation clause, intensive consultations between the parties would take place similar to the procedure established in article 96 of the Agreement of Cotonou. The suspension of the agreement would remain the last resort.
- f) In certain cases, political concerns may arise between the moment of signature of the Agreement and its ratification. This could lead to the suspension of the ratification procedures. Such a situation could occur in the cases of concerns related to the proliferation of WMD.
- As concerns wider EU conditionality, including EU assistance programs, the Council invites the Commission to study the possibility to establish a link between the non-compliance by a given country with its engagements as regards non-proliferation and suspension of Community assistance. This question would be taken forward as part of the annual GAERC debate on the coherence of the EU external action.

"Non-proliferation clause" to be included in agreements
with third countries

Countering proliferation of weapons of mass destruction

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

The parties furthermore agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:

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

The Parties agree to establish a regular political dialogue that will accompany and consolidate these elements.

* *These two elements might be considered as essential elements on a case by case basis.*