



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 May 2005

**14458/2/04
REV 2 EXT 1**

**PESC 948
COTER 79
JAI 440**

PARTIAL DECLASSIFICATION

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Subject : EU Counter-Terrorism Clauses: assessment

Delegations will find attached the declassified section of the above-mentioned document.



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**14458/2/04
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**PESC 948
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NOTE

from : EU Counter-Terrorism Coordinator / Commission
to : PSC

Subject : EU Counter-Terrorism Clauses: assessment

I. Mandate

1. The **Plan of Action to Combat Terrorism** approved by the European Council on 21 September 2001 requested the Council systematically to evaluate EU relations with third countries in the light of the support which those countries might give to terrorism. The view was subsequently taken that counter-terrorism clauses should be inserted into agreements with third countries to serve as a tool for such a review of relations. At its meeting in Seville in June 2002, the European Council reaffirmed that the fight against terrorism requires a global approach and took stock of the fact that the EU was including counter-terrorism clauses into all agreements with third countries.

2. **NOT DECLASSIFIED**
3. The **European Declaration on Combating Terrorism of 25 March 2004** set out, among other goals, two strategic objectives in the area of external relations: to deepen the international consensus and enhance international efforts to combat terrorism (**objective 1**); to target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced (**objective 7**).
4. Under objective 1, the Declaration gives the following mandate: "Include effective counter-terrorism clauses in all agreements with third countries". Under objective 7, it gives the following mandate: "Ensure that specific counter-terrorism issues, including effective counter-terrorism clauses in all agreements, reflecting the priorities of the revised Plan of Action, are a key element of EU relations at all levels with priority countries".
5. Under objectives 1 and 7, the revised **Plan of Action to Combat Terrorism** adopted by the European Council on 18 June 2004 provides for an assessment of the effectiveness of currently existing counter-terrorism clauses to be carried out by the Counter-terrorism Coordinator and the Commission by December 2004; this assessment is to include suggestions for improvement where appropriate.

II. State of play

6. **NOT DECLASSIFIED**

7. **NOT DECLASSIFIED**

8. **NOT DECLASSIFIED**

9. **NOT DECLASSIFIED**

10. **NOT DECLASSIFIED**

11. As regards the legal nature of the counter-terrorism provisions agreed with third countries, a difference can be noted as between counter-terrorism clauses contained in association and cooperation agreements, on the one hand, **NOT DECLASSIFIED** on the other hand. While the former are legally binding, the latter do not amount to "clauses" in the formal legal sense, **NOT DECLASSIFIED** rather, their significance is mainly political and they can be read as a political statement of intent. While counter-terrorism clauses in agreements regularly provide the best basis for a comprehensive cooperation with third countries, both types of provisions can, from a practical point of view, carry equally significant political and operational implications for EU relations with third countries.

12. Moreover, counter-terrorism clauses can take different forms in respect of their legal source, namely, they can be part of a formal agreement or they can make the subject of an exchange of letters or of a joint declaration. **NOT DECLASSIFIED**

III. Contents of counter-terrorism provisions

13. **NOT DECLASSIFIED**

14. **NOT DECLASSIFIED**

15. The contents of the **provisions being currently negotiated** are being adapted so as to suit the specifics of EU relations with the individual countries concerned and as a result of the demands put forward in negotiations by partners. Thus, while they retain the elements comprised in the standard text, they are more articulate and broader in scope. The following concrete cases can be noted.

16. **NOT DECLASSIFIED**

17. **NOT DECLASSIFIED**

18. **NOT DECLASSIFIED**

NOT DECLASSIFIED

22. **NOT DECLASSIFIED**

IV. Assessment

a) Coverage and contents

23. Since 2001, counter-terrorism clauses have been negotiated with a significant number of partners, **NOT DECLASSIFIED** In addition, counter-terrorism provisions will be the subject of negotiations with several more countries in the coming months, **NOT DECLASSIFIED**

24. **NOT DECLASSIFIED**

NOT DECLASSIFIED

b) Political significance

28. Counter-terrorism clauses in agreements and action plans with third countries entail an element of conditionality and contribute to raising the political profile of EU external policy. They help ensure that specific counter-terrorism issues, such as the commitment to combating terrorism and/or to addressing factors which underlie terrorism and/or to respecting human rights in the fight against terrorism, become a key element of EU relations with third countries. In this respect, counter-terrorism clauses are conducive to the objective of mainstreaming counter-terrorism concerns into EU external action and contribute to focussing political attention on counter-terrorism issues at bilateral level.

29. While it may be argued that counter-terrorism clauses in agreements and action plans with third countries are not a necessary element of EU external policy in the area of counter-terrorism, it is worth recognizing that they can be a useful tool, even as EU foreign policy extends its reach and develops a global scope. **NOT DECLASSIFIED**

30. In this respect, given the current profile of CFSP at the present stage and prospects for its further development, counter-terrorism clauses are significant politically, regardless of immediate practical implications and aside from the operation of conditionality in practice.

31. **NOT DECLASSIFIED**

c) Practical implementation and follow-up

32. **NOT DECLASSIFIED**

33. Counter-terrorism clauses relate to a variety of subjects spanning a broad range of EU policies across the three pillars, as they provide for dialogue and cooperation covering both political and security affairs, justice and home affairs (such as, for instance, judicial and police cooperation), and economic affairs (e.g. terrorist financing and money laundering). Accordingly, implementation of the clause is to ensue across pillars in all of these fields.

NOT DECLASSIFIED

37. **NOT DECLASSIFIED**

38. Judicial and law-enforcement cooperation is to be developed between the judicial and law-enforcement authorities of EU Member States and the agencies of relevant third countries. Where appropriate, agreements should be concluded to provide for the development of cooperation between EU agencies (Europol, Eurojust) and third-country authorities. Specialised exchanges of views with third countries on means and methods used to counter terrorism and a specialized exchange of experience on terrorism prevention could be held at EU level in respect of international transport security and border controls, as work is conducted to develop EU approaches and standards in these areas.

Standard Counter-Terrorism Clause agreed by COREPER in 2002

"The Parties reaffirm the importance of the fight against terrorism, and in accordance with international conventions and with their respective legislation and regulations agree to co-operate in the prevention and suppression of terrorist acts. They shall do so in particular:

- in the framework of the full implementation of Resolution 1373 of the UN Security Council and other relevant UN resolutions, international conventions and instruments;
- by exchange of information on terrorist groups and their support networks in accordance with international and national law; and,
- by exchanges of views on means and methods used to counter terrorism, including in technical fields and training, and by exchange of experiences in respect of terrorism prevention."
