The EU legal framework for preventing BW proliferation and promoting biosafety and security

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What is VERTIC?

VERTIC is an independent, non-profit making, non-governmental organization located in London, United Kingdom, that promotes the effective verification and implementation of arms control, disarmament and environment agreements.

VERTIC’s National Implementation Measures (NIM) Programme, with funding and in-kind assistance from Canada and the United Kingdom, has been developed to assist States in understanding what measures are required at the national level to comply with the prohibitions in a wide range of nuclear, chemical and biological weapons treaties and UN Security Council resolutions and how to implement them.

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Overview of my presentation

I. Preventing BW proliferation

II. The benefits of implementation

III. VERTIC’s EU legislation survey

IV. The EU legal framework: preventing BW proliferation and financing of terrorism

V. How comprehensive is the EU legal framework?
I. Preventing BW proliferation

Criminalizing the Biological Weapons Convention prohibitions

- development, production, acquisition, stockpiling, retention, direct or indirect transfers, and use of biological weapons (and preparatory activities such as attempts or financing)
- unlicensed activities involving controlled pathogens or toxins (such as anthrax, botulin toxin, Ebola, plague, tularaemia, etc.)

Enforcement measures

- Extraterritoriality and international co-operation on judicial and criminal matters
- National Authority? Stand-alone or combine with existing CWC NA
- National inspections of laboratories and other facilities where controlled pathogens may be found (there’s no international inspections regime)
- Disease surveillance; response capability in the event of a natural, accidental or intentional outbreak (and co-operation among law enforcement; human and animal health officials)
Biosafety and Biosecurity measures

• Controlled agent lists based on threat to public health and safety and national security (e.g. EU dual-use lists; WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
• Establishing a licensing system for individuals and laboratories wishing to carry out activities with controlled agents
• Notification of loss or theft
• Comprehensive record-keeping
• Biosafety and biosecurity training for personnel
• Physically secure labs and personnel background checks
• Secure transportation (approved carriers, secure containers and packaging, labelling, shipment tracking)

Transfer controls

• Controlled agent lists (see above)
• Internal and international transfer controls through permits (that is, export and import controls)
• Customs/border controls and checks of documentation, end-use certificates, and detection equipment
II. The benefits of implementation

• States can investigate, prosecute and punish any offences, including preparatory acts, associated with biological weapons, committed by non-State actors such as terrorists

• States can monitor and supervise any activities, including transfers, involving controlled biological agents or toxins

• States will enhance their national security; public safety; and human, animal and plant health

• States with effective and adequate legislation will strongly signal to potential investors that they are a safe and responsible location for activities involving dangerous biological materials; good laws promote trade!

• States’ obligations under the BWC and UN Security Council Resolution 1540 will be satisfied and they will be able to enhance transparency about their national implementation, including through the BWC CBM data exchange process
III. VERTIC’s EU survey

• VERTIC reviewed the EU’s legal framework for combating bioterrorism, prevention proliferation, promoting biosecurity/biosafety and enforcement (under EU Project n° 253485 - U. of Milan)

• This ‘survey’ – now in English, French, Portuguese and Spanish – is based on 96 criteria covering definitions, offences (and preparatory offences), jurisdiction, control lists, biosafety/biosecurity, transfers control, and enforcement

• The survey identifies the legal gaps to be addressed to prevent the proliferation of BW, promote biosafety and biosecurity and implement UNSCR 1540

• EU regulations, directives and decisions must of course be implemented through national law!
IV. The EU legal framework: preventing BW proliferation (and financing of terrorism)

• Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)

• Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

• Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime

The EU legal framework: biosafety and biosecurity


• European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR – 2011) [NB: this agreement is not strictly speaking legislation]
The EU legal framework: GMOs


The EU legal framework: enforcement (1)

• Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences

• Council Framework Decision of 13 June 2002 on joint investigation teams


The EU legal framework: enforcement (2)

• Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes

• Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

• Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings

• Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime
EU legislation and member state laws/regs on the VERTIC website…
V. How comprehensive is the EU legal framework? BW criminalization

• The term ‘biological weapon’ is not defined in the EU legal framework

• The 2002 framework decision on combating terrorism requires member states to criminalize activities involving biological weapons, including development, manufacture, acquisition, possession, transport, supply and use (transfers may be covered by supply)

• Threats to commit acts with biological weapons are prohibited under the 2002 decision on terrorism, and natural and legal persons must be punished for any BW crimes

• Financing terrorist acts, including ones with BW, is prohibited by the directive on money laundering and financing of terrorism; this must be implemented in national law
How comprehensive is the EU legal framework?
Biosafety and biosecurity

• the EU directive on worker safety defines ‘biological agent’ and includes annexes with classification lists for pathogens

• the EU legal framework includes measures to account for use and transport but not production and storage of pathogens and toxins; there are also measures to secure their use, storage and transport but not their production

• certain physical protection measures are required, but an authorisation system (for working with pathogens) is not required nor is disposal explicitly covered

• GMOs are comprehensively regulated by the EU legal framework; this regime must be implemented through national laws
How comprehensive is the EU legal framework?

Transfers control

• the 2009 EU regulation on transfers of dual-use goods includes annexes of controls lists including for pathogens and toxins

• this same regulation requires EU Member States to promulgate laws and regulations for:
  
  – export licensing
  – a licensing authority (through customs agencies)
  – end-use controls
  – catch-all control
  – intangible transfers
  – transit control and control of brokering (but not re-export or import controls)
How comprehensive is the EU legal framework?

Enforcement

The EU has a broad legal framework in place requiring member states to enact legislation covering:

– investigations
– surveillance
– warrants
– legal co-operation and assistance with other EU member states (also in relation to terrorism under the 2002 decision)
– national inspections and law enforcement/public health official co-operation are not expressly included in the EU legal framework
Questions?

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