

DEPUTADA AO PARLAMENTO EUROPEU

Annalisa Giannella  
Personal Representative of the High Representative on Non-Proliferation  
Rue de la Loi 175  
B-1048 Brussels

Brussels, November 12, 2007

Dear Ms. Giannella

I am sending you a copy of the letter I have sent to Commissioner Ferrero-Waldner on the implementation of the latest Joint Action in support of the OPCW (2007/185/CFSP).

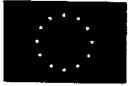
Let me assure you that I will submit this matter to the Subcommittee on Security and Defence of the European Parliament in due course.



Best regards,

Ana Gomes, MEP

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Benita Ferrero-Waldner  
Commissioner for External Relations and Neighbourhood Policy  
DG RELEX  
BERL 09/203  
B - 1049 Bruxelles

Brussels, 9 November 2007

Dear Commissioner, *Dear Benita,*

I am writing to you on the subject of EU support to the Organization for the Prohibition of Chemical Weapons (OPCW).

As the Vice-Chair of the Subcommittee on Security and Defence of the European Parliament, I was invited by the OPCW to speak at its *Industry and Protection Forum*, which took place on 1 and 2 November. As you know, the EU has been a strong supporter of this organization, with the Council approving three Joint Actions within the context of Chapter III of the EU's 2003 *Strategy Against the Proliferation of Weapons of Mass Destruction*.

The latest Joint Action in support of the OPCW (2007/185/CFSP) was approved on March 19, 2007 and includes a financial reference amount for the implementation of seven projects worth €1.7 million. The *Industry and Protection Forum* I attended, for example, was funded through this Joint Action. In targeting specific projects, the EU's role in support of the OPCW is highly valued and viewed as complimentary to the significant assistance provided by Member States (for instance Germany and the UK are among the top four contributors). I understand that the OPCW's very modest budget has come to depend on these Joint Actions for its work.

Inexplicably, there was a five month gap between the adoption of the Joint Action by the Council and the Commission's signature of the Financing Agreement. That long hiatus put the OPCW in an awkward position: it could either delay the implementation of some projects identified under the Joint Action (which in some cases was undesirable and impractical) and simply cancel others; or, alternatively, it could charge the necessary expenditures against its own regular budget, pending the signature of the Financial Agreement.



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The OPCW chose not to endanger these important projects and dedicated - during the period in question (after the approval of the Joint Action in March, but before the signature of the Financial Agreement by the Commission in August) - €715.638 to their prompt and effective implementation.

This was a wise choice taking into account the importance and time-bound nature of the OPCW's activities and based upon the long and healthy relationship between it and the Commission.

However, it has come to our knowledge that the Commission is evoking legal arguments in order not to release the above-mentioned amount from the Joint Action funds. According to information at our disposal, the Directorate of DG RELEX in charge of implementing this project (Crisis Platform and Policy Coordination in CFSP), is arguing that the Joint Action does not foresee any date for the eligibility of expenditures *before* the signature of the Financing Agreement. This apparently means that expenditure is only eligible from the date of entry into force of the Agreement. Article 5 of the Joint Action is quoted in support of this argument, since it stipulates that the duration of the Joint Action shall expire 18 months after the conclusion of the Financing Agreement.

However, there are several important points to keep in mind:

1. The OPCW has been in touch with the Commission from as early as December 2006 on the modalities of the implementation of the projects that were to be financed by this Joint Action, including their timelines. The Commission was made aware that the specific nature of several of these projects meant that they had to be implemented, (procurement contracts signed, and advanced payments made) during the long period between March 2007 and August 2007. Apparently, at no point the Commission objected to the calendar for implementation presented by the OPCW.
2. The OPCW received a note from the Council Presidency in April 2007, following the adoption of the Joint Action, which stated that it "*will be implemented during the German, Portuguese and Slovenian Presidencies*", i.e. with 30 June 2008 as expiration date. Also, the Commission never made it clear to the OPCW that relevant expenditure made prior to the signing of the Contribution Agreement was ineligible. The Joint Action and the Financial Agreement also lack any explicit statement in this regard. While it is true that Article 5 of the Joint Action stipulates its duration will expire 18 months after the conclusion of the financing agreement, **it also states** that the "*Joint Action shall enter into force on the day of its adoption [March 19]*", which is a clear legal and political commitment to the effective implementation of the projects listed in its Article 1. It should also be pointed out that Article 2 of the same

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Joint Action states that "*the Commission shall endeavour to conclude the financing agreement ... as soon as possible after the entry into force of this Joint Action.*"

It is hard to believe that August 23, five months after the approval of the Joint Action, was the earliest possible date for the signature of the Financing Agreement. It is equally astonishing that the Commission was willing to put the viability of a considerable part of this Joint Action in danger by allowing such a long period to elapse between the approval of the Joint Action and the signature of the Financing Agreement - especially since it was aware that the OPCW was not allowed to 'save' any projects by advancing resources from its own budget.

But what is truly inexplicable is the lack of flexibility by the Commission in dealing with the OPCW at this point. There was clearly a mutual misunderstanding and a lack of administrative agility on the part of relevant Commission services, which should now try their utmost to repair the damage and transfer the financial resources as soon as possible. Otherwise the very implementation of the Joint Action, as it was approved by Council, is at risk.

3. In my intervention in The Hague I praised the OPCW and its interaction with the EU as a great example "*of multilateralism that works*". If the administrative stumbling block described above is not removed in due course, it may lead to serious political consequences, as the EU's commitment to the OPCW, its visibility and reputation in the field of the fight against the proliferation of WMD can become irrevocably damaged.

I cannot help but highlight that there have already been several instances where the Commission's cumbersome administrative procedures have seriously undermined the implementation of the EU's CFSP. The most glaring and recent example is EUPOL Afghanistan's slow deployment, which was also caused, among many other factors, by the Commission's complicated procurement procedures.

To conclude, I would like to ask you for your personal involvement in the dispute between your services and the OPCW, since this is a question of a political nature, going far beyond the legal minutiae being evoked by the relevant Commission services.



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I would appreciate it if you could keep me informed on the steps you will take to remedy the current impasse and its positive resolution.



Warm regards,

Ana Gomes, MEP

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CC:

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