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**Strengthening EU mutual assistance in case of an armed aggression
upon a Member State**

Overview on the implementation of Article 42(7) TEU

This EEAS document provides an overview on the implementation of Article 42(7) TEU. As the invocation and implementation of Article 42(7) TEU is the sole responsibility of Member States, it is also Member States' responsibility to maintain a high level of preparedness. This overview aims to contribute to ensuring such preparedness, in particular with regard to the implementation procedures of the Article.

It will be revised, if necessary, in particular on the basis of lessons from future exercises and/or experiences. The 2016 opinion of the Council Legal Service on Article 42(7) TEU¹ provides further information on legal aspects relating to the Article.

Introduction

The Treaty of Lisbon introduced Article 42(7) TEU in the Section on the Common Security and Defence Policy of the EU.

Article 42(7) TEU

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

The criteria for application of Article 42(7) TEU are (I) an armed aggression (II) on the territory of a Member State. In accordance with EU and international law, it is for the attacked Member State to take a political decision whether to invoke this Article in a given situation. In case of an armed aggression on the territory of more than one Member State, it is possible that all attacked Member States invoke the Article at the same time.

Once activated, this Article creates a legally binding obligation on all the Member States to provide aid and assistance to the attacked Member State(s) by all means in their power. While leaving a certain discretion as to the form of this aid and assistance, this obligation means that the assistance provided by each Member State should address the requirements and needs of the attacked Member State, which can go beyond the direct implications of the attack on its territory. The nature of this aid and assistance is therefore determined on a case-by-case basis.

¹ Opinion of the Legal Service on Article 42(7) TEU, 11176/16, 12 July 2016.

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Article 42(7) TEU contains two qualifications on the obligation to provide aid and assistance, namely that (I) it shall not prejudice the specific character of the security and defence policy of certain Member States; and (II) that it shall be consistent with commitments under NATO, which remains the foundation of the collective defence for those States that are members of it.

The Article does not define any procedure for its implementation.

Finally, Article 42(7) TEU does not explicitly require or provide for any role of EU institutions for its implementation.

The decision whether to request assistance by invoking Article 42(7) TEU is a political decision of the Member State that experiences the armed aggression on its territory. While the Article itself does not foresee a procedure in this regard, the invocation must be clear, unambiguous and addressed to all other Member States.

Scope of application of Article 42(7) TEU

The scope of Article 42(7) TEU is circumscribed by the abovementioned applicable criteria: an armed aggression on the territory of a Member State. Such armed aggression must be launched or directed from abroad, and may comprise armed aggressions by non-State actors, as well as an armed aggression as part of a hybrid campaign and/or in the form of a cyber attack, consistent with the relevant principles of international law.

Implementation of Article 42(7) TEU

The Article does not specify the procedure for implementing the assistance. Considering the armed aggression in question and the overall situation, it is for the concerned Member State to decide on the implementation. It can do so, for example, through direct contacts with the other Member States, but also through an organ or institution of the European Union – though this is not explicit in the Article. This gives the attacked Member State a high degree of flexibility as regards the implementation, allowing it to take into consideration the scale of the armed aggression, the required assistance, and the existing capacities of the Member States providing assistance.

Nature of the aid and assistance under Article 42(7) TEU

Although it creates a legal obligation for the Member States to provide “aid and assistance by all the means in their power” to the attacked Member State, Article 42(7) TEU does not define the nature of this aid and assistance. This leaves a certain amount of discretion. The attacked Member State is responsible for communicating the type of assistance it would require in the given situation. The aid and assistance can be military or civilian, but it should be meaningful and respond to the requirements specified by the attacked Member State.

The Article furthermore states that the obligation to provide aid and assistance must be consistent with commitments under NATO, for those Member States who are also NATO Allies, and that it should not be contrary to the specific character of Member States’ security and defence policy.

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