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COVER NOTE

From: European External Action Service (EEAS)
To: Political and Security Committee (PSC)
Subject: Military Advice on EEAS Food For Thought Paper (FFT) on Article 44 TEU

Delegations will find attached document EEAS (2015) 9 REV 4.

Encl.: EEAS (2015) 9 REV 4

EUROPEAN EXTERNAL ACTION SERVICE



EUROPEAN UNION MILITARY STAFF

Brussels, 09 March 2015

EEAS (2015) 9
REV 4

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NOTE

From: European Union Military Committee

To: Political and Security Committee

No. Prev. doc.: –

Subject: Military Advice on EEAS Food For Thought Paper (FFT) on Article 44 TEU

Delegations will find attached the Military Advice on the EEAS FFT on Article 44 TEU, which was agreed by the EUMC on 09 March 2015.

The EUMC recommends that PSC notes this military advice.

References:

- A. EEAS Food For Thought Paper on Article 44 TEU (Brussels, 07 October 2014) (PSC MD 128/14).
- B. RELEVE des conclusions du COPS (Brussels, 09 October 2014) (CFSP/SEC/0696/14).
- C. Legal Service contribution on the conditions and modalities of recourse to Article 44 TEU (Brussels, 13 January 2015) (ST 5225/15)
- D. Treaty on European Union (TEU).

A. INTRODUCTION AND AIM

1. The PSC (Ref. B) invited the EUMC to provide military advice on the EEAS Food For Thought (FFT) paper on Article 44 TEU (Ref. A).
2. The EUMC welcomes the EEAS FFT paper on Article 44 TEU and the subsequent contribution from Council Legal Service and accepts the opportunity to comment on the military aspects and possible military implications.
3. This submission provides the requested Military Advice on the EEAS FFT Paper on Article 44 TEU (Ref. A).

B. ADVICE

Political Framework

4. The EUMC notes that Article 44 is provided for under the TEU provisions on the common security and defence policy and agrees that Article 44 TEU applies to both civilian and military missions/operations; that it does not refer to capability development; and that it does refer to the tasks laid down in Articles 42(1) and Article 43 TEU related to EU military missions/operations.
5. The EUMC acknowledges and stresses that any employment of Article 44 is, in the first instance, **a political consideration** and dependent on unanimous approval by the Council, as another modality of a CSDP mission or operation, fully in line with

Articles 42(1) and (4), 43(1) and (2) and 44 TEU, taking into account Article 31(1) TEU.

6. The EUMC underlines that the political-will/consensus of the MS remains crucial for timely decision-making under Article 44 TEU.
7. A Member State can also opt to abstain or opt for constructive abstention under Article 31.1 TEU in the vote on the Council Decision.

Employment of Article 44 for Military Actions

8. The EUMC considers that the potential for a time expedient deployment under Article 44 TEU depends on the group of member states' ability to provide the necessary capabilities for the task at hand. It is this potential that may critically differentiate an Article 44 TEU military mission/operation from existing military deployments under Article 42 TEU.
9. The EUMC furthermore notes that, to the extent that Article 44 does not lay down specific provisions, relevant CSDP/CFSP Treaty articles and their related provisions and regulations do apply, including those related to cooperation with partners and the security of information.
10. The EUMC acknowledges that an application for an Article 44 mission/operation may emanate directly from a Group of MS to the Council (i.e. a bottom-up approach), or on the agreed initiative of the Council to the Group of Member States (i.e. a top-down approach).
11. The EUMC notes that all Member States who wish to join the group of MS implementing an Article 44 mission/operation may do so.
12. The EUMC acknowledges that it might be useful to exercise Article 44.

Rapid Response

13. The EUMC underlines that the existing EU BG arrangement is currently the most

tangible EU military Rapid Response capability. Article 44 should be considered complementary to the recently approved EU Military Rapid Response Concept¹ (and related Annexes).

CSDP Crisis Management Procedures

14. The EUMC stresses, that the existing “Suggestions for crisis management procedures for CSDP crisis management operations” do provide the basis for the EU's collective decision-making for the employment of civilian and military CSDP missions and operations. As such they also provide the basis for military missions/operations under Article 44 TEU.
15. The EUMC recommends that the following decision-making elements should be provided, under EUMC advice as appropriate, to the PSC/Council in order to inform any Council Decision to establish and launch a military mission/operation under Article 44 TEU. Without prejudice to legal or political requirements, from a military point of view the following are the minimum requirements.
 - a. EU Approach: To include EU Political Interest, EU Political Objective and EU Strategic Objective and Political End State.
 - b. Mission Statement and Concept of Mission/Operation.
 - c. Location of the Mission.
 - d. Mission Tasks.
 - e. Military End State: To include EU exit strategy, possible timelines, duration and transition.
 - f. Risk to Mission Accomplishment.
 - g. Legal Framework.
 - h. Participation of Third States.
 - i. Mid Mandate Strategic Review and Strategic Mission Reporting

¹ EEAS 02168/4/14

Mechanism.

- j. Command and Control Concept.
- k. Medical Support Concept.
- l. Use of Force Guidance and associated Rules of Engagement (ROE).
- m. Any direction/guidance on Detention.

16. The EUMC underlines that also under the particular circumstances of an Article 44 CSDP mission/operation the CMP can be applied in a flexible manner.

Role of the EUMC

17. As a mission/operation set up under Article 44 TEU is a Union CSDP military mission/operation, the EUMC stresses that the mission and functions of the EUMC and the Chairman of the EUMC, described in the annex of the Council Decision setting up the Military Committee of the European Union, applies to this type of CSDP military mission/ operation.

Management of Task

18. The EUMC acknowledges Legal Service Advice on the implementation of the task as entrusted to the Group of MS and agrees that this could include the Force Generation process and military Command and Control (C2), participating MS' organisational structures and appointments for the mission task in theatre. The degree of autonomy in the management of the task, as determined by the Group of MS "in association with the High Representative"² must nevertheless, be approved by the Council and remain under the political control of the PSC, taking also into account the Military Advice as provided by the EUMC.

19. The EUMC points out that the EU Framework Nation Concept³ might be applied to

² Article 44.1 TEU

³ ST 16276/10 dated 22 November 2010

an Article 44 mission/operation. This Concept defines a 'Framework Nation' as "a Member State or a group of Member States that has volunteered to, and that the Council has agreed, should have specific responsibilities in an operation over which EU exercises political control.

20. The EUMC advises that the degree of control held by the PSC and the information flow from the Group of MS should mirror existing mechanisms utilised for Article 42 and Article 43 TEU CSDP missions, thereby preserving PSC political control and strategic direction.

21. The EUMC underlines that the Group of Member States implementing a task under Article 44 TEU should receive the same level of EEAS support as is traditionally provided to past and current CSDP military missions under Article 42 TEU.

Financial Aspect

22. The EUMC agrees that unless the Council unanimously decides otherwise⁴:

(a) For EU Operations/Missions under Article 44 having military or defence implications, the Athena Mechanism will be used for costs financed in common⁵;

(b) In circumstances where an Article 44 operation takes over a pre-existing operation, the costs covered by the Athena Mechanism will not be retroactive.

23. A constructive abstention under Article 31.1 TEU in the vote on the Council Decision allows a possible financial opt-out.

Potential Added Value of Using Article 44

24. The EUMC considers and highlights the potential value added of using Article 44 to be:

a. Force Generation. Where a Group of MS are willing and capable of

⁴ Article 41(2) TEU - "Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise".

⁵ Without prejudice to the position of Denmark in relation to military operations.

executing a task entrusted under Article 44 TEU, it is likely that the Force Generation requirement may be rapidly concluded.

- b. Flexibility. Where Member States politically support a military operation/mission, but only a limited number of Member States are willing and/or able to participate militarily, Article 44 enables an additional CSDP option which provides more flexibility in terms of means of conducting the mission and establishing ad-hoc C2 structures.

C. RECOMMENDATIONS

- 25. The EUMC recommends that PSC notes this military advice.
