

“Aid and Assistance by All Means
in their Power”

The EU Mutual Assistance Clause as a Test Case for European Defense

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It has been over a year since the terror attacks in Paris led EU member states – at France’s behest – to unanimously invoke the European mutual assistance clause from Article 42.7 of the Lisbon Treaty. In terms of actual military support, results were mixed, but among those countries who did contribute, only a few referred consistently and conspicuously to the EU’s mutual assistance clause. Germany explicitly interpreted France’s call as a turning point for the EU as a defense community. Other countries – like the United Kingdom, the Netherlands, and Poland – provided assistance, but their public statements consciously gave the European context a lower profile. The support offered under Article 42.7 can only mark a beginning. Both the Brexit vote and the election of Donald Trump to the US presidency have made clear that EU states have an existential interest in pursuing closer and better defense cooperation.

The security situation in and around Europe has hardly improved since November 17, 2015, when French Defense Minister Jean-Yves Le Drian stood before his fellow EU defense ministers and formally requested military assistance from all EU member states. The threat of domestic terrorism has continued to grow, states in the Middle East and Africa continue to fail, and Russia continues to contribute to instability in the post-Soviet sphere. Now Europe is bracing for the inauguration of US President-elect Donald Trump, whose campaign loudly called Washington’s security guarantee for Europe into question. European security policy requires greater unity, greater resources, and more robust mechanisms for facing the uncertain future.

Against this background, it is worth looking carefully at what has been achieved in the past 12 months. When France activated Article 42.7 of the Lisbon Treaty (Treaty of the European Union, or TEU), it was the first EU member state to invoke Europe’s “mutual assistance clause” since the treaty went into effect in 2009. France, as a victim of “armed aggression on its own territory” was requesting “aid and assistance by all means in their power” from other member states. In fact, the decision took other EU states entirely by surprise. Immediately after the November 13, 2015 attacks in Paris, there was speculation that the NATO charter’s Article 5 would be invoked, but

no one had considered Article 42.7 of the TEU. Given the lack of precedence, the concrete application of the mutual assistance clause was at first unclear.

France's decision inevitably raised questions about what mutual assistance actually means in a European context: How did member states interpret Article 42.7? What would the consequences be for their own behavior? Which concrete actions followed from it? And which functions did it accord to the European institutions?

France's Reasons for Invoking Article 42.7

The Lisbon Treaty basically offers member states two options after a terrorist attack of this sort. At first glance, Article 222 of the Treaty on the Functioning of the European Union (TFEU) might have seemed more applicable to the French context than Article 42.7 of the TEU. The TFEU's "solidarity clause" is explicitly tailored to terrorist attacks and requires the entire union – member states and institutions – to support the state in question. Under the invocation of this article, however, all support measures are restricted to the territory of the country seeking assistance. The affected state can only activate the clause "if, after having exploited the possibilities offered by existing means and tools at national and union level, it considers that the crisis clearly overwhelms the response capabilities available to it."¹ Finally, Article 222 TFEU explicitly stipulates a leading role for European institutions (Council, Commission, European External Action Service), thereby granting it a supranational character.

The French government chose not to invoke Article 222 TFEU for three reasons. First, it preferred an intergovernmental framework for action, given that it wanted to continue to control the steps taken in response to the attacks. Unlike Article 222 TFEU, the mutual assistance clause of Article 42.7 TEU engages each member state on a purely bilateral basis. Federica Mogherini, the EU's high representative for foreign affairs and security policy, immediately made clear that under 42.7 of the TEU neither a formal decision by nor conclusions from the Council were required.² France therefore had free rein in its implementation arrangements. Second, the French government sought to avoid encouraging the perception among its citizens that the crisis "clearly overwhelm[ed] the response capabilities available" to France, which would have been interpreted as a declaration of bankruptcy on the part of President François Hollande. Third, France was seeking not assistance for its domestic security but rather support for its foreign military engagements, above all in Iraq and Syria.

The NATO charter's Article 5 was no recourse for France either. Although the country rejoined NATO's integrated command in 2009, it has long advocated an autonomous European security and defense policy. Another point against NATO participation was that the US and Turkey would have demanded a strong voice in the process. By invoking Article 42.7 TEU – instead of NATO Article 5 – France would be able to cooperate with Russia in the fight against ISIS. NATO operations, moreover, could have obstructed French efforts to work with Arab partners. Finally, President Hollande was concerned that the French reaction to the terror attacks be based on a broad social consensus. He wanted to avoid the kind of polarization that recourse to NATO would inevitably have entailed.

The activation of Article 42.7 TEU allowed the country to communicate domestically that France did not stand alone in the fight against terrorism. By invoking the mutual assistance clause it implied that the attacks were against all of Europe.³ At the same time, Paris could send a strong signal of European unity: despite internal quarrels on topics ranging from the euro crisis to refugees to the threat of a looming Brexit, the EU stands together when times are tough. Beyond this, the Élysée Palace saw a welcome opportunity to promote the development of a European defense union and to inspire member states to breathe life into the unused potential of the Lisbon Treaty. The article's intergovernmental approach made it possible even for member states skeptical of further collectivization of EU activities to show their solidarity with France.⁴

Member State Responses

Even though the EU member states were unanimous in invoking Article 42.7, their interpretations of subsequent responsibilities varied starkly. EU members are required to offer solidarity and aid, yet it is up to each country to decide what type of assistance it will provide and in what scope. The "specific character of the security and defense policy of certain member states" is explicitly unaffected by this article. This includes, for example, Austria's policy of maintaining military neutrality and Sweden's freedom from military alliances. Depending on how each country assessed the need for solidarity, the extent of aid could range from a sympathy telegram to military assistance. As there are absolutely no sanctioning mechanisms built into this system, the ultimate effectiveness of the joint European response is up to the member states alone.

Reacting to the terrorist attacks, France made two specific requests of its fellow member states. First, it

requested additional support within the framework of the international alliance against ISIS in Iraq and Syria, either directly via air attacks or indirectly through intelligence, information exchanges, or logistical arrangements. Second, France sought relief in some of its other military theaters in order to reposition those forces elsewhere. This included, for example, replacing French troops within the framework of the Common Security and Defense Policy (CSDP - i.e., in EU training programs in Mali) or in UN missions (UNIFIL in Lebanon, MINUSMA in Mali, and MINUSCA in the Central African Republic).

Over the following weeks and months, France negotiated bilateral agreements on concrete commitments. Some of these negotiations were quite protracted as national parliaments were included in the decision-making process, or, as in the cases of Spain and Poland, because the government was unavailable for negotiations because it had not yet or had only recently been formed. Indeed, many of these negotiations have yet to yield results.⁵

By the end of June 2016, 14 EU member states had finalized their concrete contributions: Belgium, Estonia, Germany, Finland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden, and the UK. Since then, parliaments in Austria and the Czech Republic have also agreed to specific contributions. This should not, however, distract from the fact that 7 member states had yet to decide whether to contribute anything at all: Bulgaria, Croatia, Cyprus, Greece, Ireland, Malta, and Spain.⁶

Thus far, the type and scope of contributions have been highly diverse. If we consider the largest military forces within the EU – the UK, Germany, Italy, and Spain – the first two were extremely quick to take action within their domestic political and legal frameworks and have made significant contributions. Italy in contrast pointed to its existing engagement in Iraq, which began before the Paris attacks on November 13, 2015, and made clear that further military involvement in Syria or Africa was not currently up for debate. Indeed, Prime Minister Matteo Renzi stressed that a military reaction need not be the only answer to terrorist attacks generally, which led to domestic accusations that he was “hiding” or shirking responsibility.⁷ Spain, lacking a government capable of conducting such negotiations, ruled out participating in air attacks from the start. Even today its concrete commitments remain entirely unclear.

France was also disappointed by Poland’s hesitant stance. Its call for mutual assistance arrived just as a freshly minted, EU-critical government was assuming

power in Warsaw. Nonetheless, Paris expected more immediate support from its longtime Weimar Triangle partner. In March 2016 France directly requested that the Visegrad Battlegroup – the multinational rapid-reaction unit under Polish command from January through June 2016 – be transferred to the Central African Republic. The mission was not undertaken due to lack of consensus within the Visegrad countries, and Poland should not be held solely responsible for this. In its stead, Polish President Andrzej Duda decided at the end of June 2016 to support the international alliance against ISIS with up to 230 Polish soldiers. Two further contingents are also deployed through the end of 2016: the first includes 160 soldiers and four F-16 jets committed to reconnaissance and support of the US Operation Inherent Resolve; the second, smaller contingent is helping train the Iraqi army.

The UK, the Netherlands, and Belgium all participated in air attacks against ISIS following the Paris attacks. Germany is providing significant military support in Syria and is also engaged in military training in Iraq, a project further supported by Finland, Latvia, the Netherlands, Romania, and Sweden. In total, 11 European states have further intensified their involvement in EU or UN missions in Africa. Some of these commitments were being negotiated or had been made before the November attacks and were simply rebranded following the invocation of Article 42.7 TEU. This applies, for example, to Germany’s decision to send up to 650 soldiers to Mali within the framework of the MINUSMA operation; the German government had already committed to this effort in order to provide relief to Dutch forces.

A Turning Point for Germany

The extent of the German response shows the great importance the German government ascribes to the mutual assistance clause. By December 4, 2015, it had pushed the mandate for Syrian military intervention through the Bundestag, proving that the country’s parliamentary restraint on military action was no hurdle to responding quickly. Although the German government excluded participation in air attacks, it promised France the deployment of up to 1200 soldiers, a German frigate, and six Tornados for reconnaissance purposes. It also pledged support in the field of military intelligence cooperation in addition to expanding its African engagement.

For Germany, France’s request for mutual assistance under Article 42.7 made politically necessary a new and more intensive form of military engagement in Syria and Iraq. This discussion would never have been previously

possible.⁸ The German government's application "for the deployment of German armed forces for protection and the prevention of terrorist acts by the terror organization ISIS" explicitly refers to Article 42.7 in its legal justification. It was important to Germany to send such a message to the entire European Union. "Germany, perhaps more than any other European country, has called for a strong European common defense initiative," writes Eric Langland. "By citing it as a basis – or even partial basis – for force, Germany is promoting the military campaign against ISIS as a coherent European response."⁹

Even the current Franco-German initiative between Defense Ministers Ursula von der Leyen and Jean-Yves Le Drian draws on the mutual assistance clause as further evidence to underline the need for more fully developed European defense capabilities.

Finland and Sweden also view the invocation of Article 42.7 as a test case for the EU as a security community that they imbue with great importance, especially considering their lack of NATO membership.¹⁰

The UK, the Netherlands, and Poland: A Low Profile for European Mutual Assistance

In the UK – the first EU member state to participate fully in air attacks against ISIS after the Paris attacks – the political decision-making process took an entirely different path. Despite the fact that the air attacks were explicitly allowed by the House of Commons on December 2, 2015, the debate in the House did not include a single mention of mutual assistance under Article 42.7. Instead, the British government invoked the Franco-British Lancaster House treaties. This was, above all, to avoid any impression before the June 2016 Brexit referendum that the country sought further involvement in CSDP missions.

Similarly, Dutch air attacks in Syria were not justified under Article 42.7 but were rather based on the argument that the Netherlands sought to improve the efficacy of the fight against ISIS.¹¹ The same can be said of Poland's military engagement in the Middle East, where deployment was cast as a response to the call of the international alliance but the European mutual assistance case remained unacknowledged. Off-the-record conversations with Polish and Dutch representatives, however, suggest that these countries did view their engagement as a response to France under Article 42.7 and communicated that message to Paris directly.¹²

While Germany, Finland, and Sweden considered the European component to be decisive and an essential element in increasing public acceptance for foreign missions, the UK, the Netherlands, and Poland sought instead

to avoid mentioning it entirely. The large euroskeptic populations in the UK and the Netherlands were certainly a major factor here, while in the case of Poland, the euroskeptic government of the Law and Justice party (PiS) was itself the primary reason.

Conclusions and Outlook

Prior to the Paris attacks, there were no definitions or guidelines in place explaining how Article 42.7 of the TEU would be applied. The EU (both member states and institutions) thus had to fall back on ad hoc measures, ad hoc structures, and ad hoc alliances that will themselves now serve as precedents. All in all, this first application of the European assistance clause was marked neither by a coherent strategy nor by a common planning approach. EU solidarity thus far looks more like a loose-leaf compilation than like a concerted effort.

As for the European institutions, Article 42.7 is worded in such a way that they were not bound to perform any specific duties. France presented its requests in the Political and Security Committee of the Council of the European Union, which it subsequently updated continuously. All discussions on national commitments, however, took place on an exclusively bilateral basis – a condition that the European Parliament (EP) strongly lamented in the course of the implementation process. In its resolution on the application of the mutual assistance clause of January 21, 2016, the EP reinforced its position that, according to the treaties, the invocation of both the mutual assistance clause and the solidarity clauses are above all a political matter. It emphasized that political statements regarding their invocation should have been delivered in the Council and the European Parliament. For that reason, the EP encouraged the European Council to push for an expansion of the mutual assistance clause and to clarify the intermediary role of the respective EU institutions.¹³ Political scientist Alexander Mattelaer made this point clearly in an EP hearing: "If Article 42.7 is really about mutual defense – about the EU going to war – then it would surely be a matter for the European Council to decide, because if declaring war is not about defining the general political direction of the union, then what is?"¹⁴

In order to apply the full potential of the European mutual assistance clause in the future, it makes sense to support the responsibilities at the EU level as clearly as possible and to gird them structurally through the European institutions and their respective capabilities. The EU's civil-military planning and leadership capabilities must be improved and expanded in order to back member states in their actions.¹⁵ As Mogherini argued

immediately after the attacks, under future invocations the EU must act primarily as a negotiator and coordinator while the member states continue to lead the efforts.¹⁶ It is in fact the intergovernmental character of Article 42.7 that made it possible for even those member states skeptical of a stronger role for Brussels in security and defense policy (like the UK and the Netherlands) to also vote for its invocation.

Under Article 42.7, France obtained support from its European partners without NATO involvement. It was a political success for President Hollande that the EU states unanimously supported France's call for mutual assistance. At the same time, Article 42.7 brought only a small number of states to fundamentally reorient their policies. Certainly, not every member state has in fact provided "aid and assistance by all means in their power." Only a handful of countries, including Germany, significantly increased their engagement; most reactions involved rather small contributions, forms of support that may have occurred anyway. More engagement should have been forthcoming from certain countries, notably Italy and Spain, and Poland's contribution came very late indeed.

Even though Brussels was granted few important responsibilities in Article 42.7's implementation and the EU can doubtless increase its security policy clout, the implementation phase deserves more than just skepticism. By invoking Article 42.7, President Hollande called forth the unused potential in the Lisbon Treaty, opening doors for the future, especially considering the treaty's permanent structured cooperation mechanism. Furthermore, invoking the article clearly reminded European foreign

policy makers that the EU seeks to become a defense community, one whose exact direction can and must still be defined. The support thus offered under Article 42.7 can be seen as just the beginning – and a small one at that. The Brexit vote and Trump's election in the US have surely made clear to European states that their interest in closer cooperation in defense matters is existential. They should take advantage quickly and sensibly of the CSDP opportunities that have arisen in the past few months. European heads of state and government should therefore meaningfully advance the goals of the Franco-German military initiative to expand military and civil missions, improve military capabilities, and develop defense cooperation measures. There are already many ideas for improving European capabilities for action, from creating an EU headquarters for military and civil CSDP missions to revising the Athena Mechanism.

The Implementation Plan on Security and Defense agreed to by all 28 EU member states on November 14, 2016, building on the EU Global Strategy presented this June, generally points in the right direction. All the same, it is still secondary to the German-French defense initiative. In the coming months Europeans should do all they can to invest more in their security, improve their military capacities, and further develop their defense cooperation. As in many cases, this is less a matter of recognizing the problems and more one of implementing their solutions.

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Notes

- 1 See Article 4, paragraph 1, "Council Decision of June 24, 2014, on the arrangements for the implementation by the union of the solidarity clause (2014/415/EU)" <<http://eur-lex.europa.eu/eli/dec/2014/415/oj>> (accessed November 18, 2016).
- 2 Federica Mogherini, "Remarques introductives de la Haute Représentante et Vice-Présidente Federica Mogherini lors de la conférence de presse avec Jean Yves Le Drian, Ministre de la Défense Français," November 17, 2015 <https://eeas.europa.eu/headquarters/headquarters-homepage/5553_en> (accessed November 18, 2016).
- 3 Thierry Tardy, "Mutual Defense – One Month On," *Issue Alert*, 55/2015, p. 1 <http://www.iss.europa.eu/uploads/media/Alert_55_Article_42.7.pdf> (accessed November 18, 2016).
- 4 Jérôme Legrand, "Will CSDP Enjoy 'Collective Gains' from France's Invocation of the EU's Mutual Defense Clause?" December 2015 <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/570452/EXPO_IDA\(2015\)570452_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/570452/EXPO_IDA(2015)570452_EN.pdf)> (accessed November 8, 2016).
- 5 For an overview of the current status of negotiations and commitments, see Suzana Elena Anghel and Carmen-Christina Cirlig, "Activation of Article 42.7 TEU: France's Request for Assistance and Member States' Responses," European Council Briefing, July 2016, p. 3 <[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2016\)581408](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)581408)> (accessed November 8, 2016).
- 6 On the basis of the Danish opt-out in CSDP matters, Denmark excluded military participation under article 42.7 from the beginning.
- 7 "Renzi prende tempo: 'Serve soft power non hard power,'" *Il Tempo*, November 18, 2015 <<http://www.iltempo.it/politica/2015/11/18/gallery/renzi-prende-tempo-serve-soft-power-non-hard-power-993826/>> (accessed November 14, 2016).
- 8 Eric Langland, "Germany's Vote to Strike ISIS in Syria Signals a Shift in Its Approach to International Law," DGAPkompakt 14 (June 14, 2016) <<https://dgap.org/en/think-tank/publications/dgapanalyse-compact/germanys-vote-strike-isis-syria>> (accessed November 8, 2016).
- 9 *Ibid.*, p. 4.
- 10 Based on the author's confidential discussions with Swedish, Finnish, and German official representatives.
- 11 The Dutch government's explanation can be found under "Netherlands to Intensify Action against ISIS in Syria and Iraq," January 29, 2016 <<https://www.government.nl/latest/news/2016/01/29/netherlands-to-intensify-action-against-isis-in-syria-and-iraq>> (accessed November 8, 2016).
- 12 Taken from confidential discussions with official representatives from both countries.
- 13 "European Parliament resolution of January 21, 2016, on the mutual defense clause (Article 42.7 TEU) (2015/3034(RSP))," January 21, 2016 <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0019+0+DOC+PDF+V0//EN>> (accessed November 18, 2016).
- 14 Anghel and Cirlig, "Activation of Article 42.7," p. 3.
- 15 See also Sven Biscop, "The European Union and Mutual Assistance: More than Defense," *International Spectator* 51, no. 2 (June 28, 2016), p. 124 <<http://dx.doi.org/10.1080/03932729.2016.1181453>> (accessed November 18, 2016).
- 16 Mogherini, "Remarques introductives."

