



# Mutual defence – one month on

by Thierry Tardy

The 13 November attacks in Paris led France to invoke the mutual defence clause of the Lisbon Treaty (Article 42.7). For the first time since the entry into force of the treaty in 2009, a state that was the ‘victim of armed aggression on its territory’ called upon the other EU members for ‘aid and assistance by all the means in their power’. The symbolic significance of the article and the implications of its invocation are not to be overlooked.

The article is a key provision of European solidarity and, what is more, it applies to the sensitive area of defence. Last but not least, the fact that its first ever invocation was made by France is not without consequences, given the scope of the country’s military engagement both inside and outside the EU framework.

## What objectives?

As the response to the attacks is not a strictly national military operation, a legal and political framework which encourages and facilitates contributions by France’s partners is required. Article 42.7 provides this – at least in part.

First, the activation of the clause underlines the gravity of France’s calls for assistance. Its invocation first by President Hollande in his speech to the *Congrès* and then by Defence Minister Le Drian at the EU Defence Council right after the attacks meant that EU member states could simply not ignore France’s requests.

Second, the defence clause conveys the idea that the terrorist attacks had not only targeted France but Europe as a whole. The combination of the emotion generated by the attacks, the activation of the clause and the adoption of UN Security Council Resolution 2249 on 20 November 2015 created a climate which helped partner countries justify their policy response *vis-à-vis* their own publics and parliaments.

Third, in an environment characterised by a certain level of CSDP fatigue, the clause creates leverage for the strengthening of CSDP operations in sub-Saharan Africa.

Finally, a hidden virtue of Article 42.7 is that its implementation does not necessarily require the EU to play a central role. It therefore offers flexibility – much desired by France – without hampering possible efforts to cooperate with Russia. Nor does it create the suspicion that the invoking of Article 5 of the Washington Treaty – thereby triggering NATO’s involvement – would generate in the Middle East.

## What solidarity?

The defence clause was chosen over the solidarity clause (Article.222 TFEU) for two main reasons: first, because the crisis did not ‘clearly overwhelm the response capabilities available’ to France; and, second, because the type of expected solidarity relates to external operations rather than to an internal response to the consequences of the attacks. Furthermore, the idea is not to create a new operation but to strengthen

commitments to existing ones. Incidentally, this makes the possible invocation of Article 44 of the Lisbon Treaty (on *ad hoc* EU operations) irrelevant.

In this context, France expressed – through bilateral requests – the need for three types of assistance in the two regions of the Middle East and sub-Saharan Africa: direct participation in the coalition against the Islamic State of Iraq and the Levant (ISIL); support for its military campaign in Iraq and Syria, Operation Chammal, through logistics, intelligence, and refuelling capabilities; and support to French deployments (be they national, European or UN operations) in Mali and the Central African Republic (CAR).

One month after the activation of the clause, though certain decisions are still pending or yet to be announced, some realistic objectives have been achieved.

It is true that, political support aside, only a few states have committed military assets in the Middle East; some medium-size states have not responded positively and the majority of the EU-28 will most likely stay away from operations in Iraq and especially Syria. Moreover some contributions, in Africa in particular, were already being discussed before the 13 November attacks, while others stem from earlier requests made by France and also the US.

This said, the most important thing is that the UK and Germany – the two countries whose contribution was most eagerly awaited – have responded rapidly, making significant contributions in full accordance with their constraining internal political and legal procedures. London began conducting airstrikes against ISIL in Syria, after military action was approved by the House of Commons on 2 December (two years and three months after a negative vote on intervening there against Assad). And Berlin deployed a naval frigate (set to operate alongside the Charles de Gaulle aircraft carrier), refuelling aircraft and reconnaissance jets (with up to 1,200 personnel) after approval by the Bundestag on 4 December.

In both cases, while it is conceivable that the commitments would have been made even without Article 42.7 (it was not mentioned at all in the debate in the UK's House of Commons), the defence clause nonetheless formed the political foundation of France's requests.

In a few other cases (Belgium, Sweden, The Netherlands), significant contributions may yet materialise, be they direct participation in operations against ISIL or the deployment of troops in the Sahel (alongside Operation Barkane or the MINUSMA) for counter-terrorism operations (in the case of Belgium).

Some EU countries already active in training and supporting the Iraqi and Kurdish forces will also beef up their commitments.

In parallel, CSDP operations in Mali and the CAR – the mandates of which will be revised next spring – will benefit from a stronger European presence. This will ensure their continued existence, something which was previously not a foregone conclusion. The strengthening of UN operations in Mali and the CAR is also being discussed, in line with the German commitment to contribute troops to MINUSMA (650 personnel), decided before the 13 November attacks.

Depending on which institutional framework is chosen by EU partners, it will be France (in case a country decides to contribute to French operations), the EU or the UN (in case it is these institutions which host new contributions) which will take over the planning process.

### What follow-up?

Through the activation of the defence clause, France has launched a process that raises questions about both the scope of Article 42.7 and what it means for the Union as a security actor.

Paradoxically, although the article is part of the Lisbon Treaty, its invocation does not make the EU as such a central actor in the response. The article does not mention the Union and though nothing excludes its involvement, the prevailing logic is intergovernmental rather than institutional.

Moreover, the interpretation of the scope of Article 42.7 has been quite broad. The idea is not to confine the possible actions of EU partners only to participating in the coalition against the organisation that carried out the attacks, but also to explore the different types of response which can free up French assets in other regions – some of which (like those in the CAR) are not linked to the fight against terrorism. In this sense, while the implementation of the clause will inevitably be limited in time, it will not be in space.

Finally, while President Hollande declared France to be “at war against jihadist terrorism”, no other EU country has adopted a similar rhetoric. In the long run, this difference of approach may impact the clause-related solidarity and fuel the debate on the overall effectiveness of the response. It also raises the question of the ability of France to exert the leadership that will ensure that the collective effort is sustained over time, well beyond the current phase of heightened emotion.

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