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EUROPARECHT ONLINE

Saar Blueprints

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The Mutual Defence Clause in the European Union
– An Analysis of its Past, Present and Future

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Preface

This publication is part of an e-paper series (Saar Blueprints), which was created as part of the Jean-Monnet-Saar activity of the Jean-Monnet Chair of Prof. Dr. Thomas Giegerich, LL.M. at the Europa-Institut of Saarland University, Germany.

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ISSN

2199-0050 (Saar Blueprints)
DOI: 10.17176/20250626-121847-0

Citation

Bartmann/Jacobs, The Mutual Defence Clause in the European Union
– An Analysis of its Past, Present and Future, Saar Blueprints 5/26, accessible via:
<https://jean-monnet-saar.eu/wp-content/uploads/2026/05/BartmannJacobs-The-Mutual-Defence-Clause.pdf>, doi: 10.17176/20260526-120600-0

Funded by the **Deutsche Forschungsgemeinschaft** (DFG) – Project No.: 525576645

The Mutual Defence Clause in the European Union

– An Analysis of its Past, Present and Future

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A. Introduction

Recent changes to the security situation in Europe, most notably the Russian invasion of Ukraine, as well as American territorial claims regarding Greenland and the developing conflict in the Middle East, have brought the issue of mutual assistance between European Union Member States, independent of the collective defence infrastructure provided by NATO, to the forefront. While the consequences of a potential Ukrainian NATO membership have been widely debated,¹ the effects of Ukrainian EU membership² with regard to the EU's mutual defence clause (Article 42(7) Treaty of the European Union (TEU)) have received comparatively little attention in legal scholarship. This article gives an overview over the EU's defence structure (B.) and examines the clause and its context in International and European Union Law (C. and D.), as well as its significance with regard to current conflicts compared to the collective defence clause of Article 5 NATO-Treaty (NATO-T) (E.) and Article 222 TFEU (F.). Furthermore, the legal implications on the Member States' national constitutional principles and distinctive national defence policies of changes to the TEU mutual defence clause proposed by the European Parliament will also be analysed (G.). There will also be a brief examination of the legal consequences a possible Ukrainian EU membership could have in this context (H.) General principles of European Law such as the principle of solidarity, subsidiarity and loyal cooperation will also be taken into account as part of the interpretation of the obligatory nature and the implications of the provision.

¹ C. Babb, 'NATO calls Ukraine's path to membership 'irreversible'', Voa News, 10 July 2024 <<https://www.voanews.com/a/ukraine-s-path-to-nato-membership-irreversible-/7693500.html>> visited 17 April 2026; C. S. Chivvis, 'Admitting Ukraine to Nato would be a mistake for both Ukraine and Nato', The Guardian, 20 June 2024 <<https://www.theguardian.com/commentisfree/article/2024/jun/20/ukraine-nato-membership>> visited 17 April 2026; P. Grod, 'Five reasons why Ukraine should be invited to join NATO', Atlantic Council, 11 July 2024 <<https://www.atlanticcouncil.org/blogs/ukrainealert/five-reasons-why-ukraine-should-be-invited-to-join-nato/>> visited 17 April 2026; V. Melkozerova, 'It's time to reinvent NATO, says Ukraine's envoy to the alliance', Politico, 3 April 2026 <<https://www.politico.eu/article/nato-donald-trump-ukraine-ambassador-alliance/>>, visited 17 April 2026.

² For the legal implications of Ukraine's EU-membership: E. Bartmann and C. Jacobs, 'Orban vs. Europäische Union: Europäische Außenpolitik als Druckmittel' [Orban vs. European Union: European foreign policy as a means of exerting pressure], *JuWiss*, 12 December 2023 <<https://www.juwiss.de/70-2023/>>, visited 17 April 2026; A. Duff, 'Europe's critical test: an emergency landing for Ukraine and the moment for common defence', *Friends of Europe*, 6 February 2026 <<https://www.friendsofeurope.org/insights/critical-thinking-europes-critical-test-an-emergency-landing-for-ukraine-and-the-moment-for-common-defence/>>, visited 17 April 2026.

B. The EU's Defence System

The EU's defence system is characterized by a variety of institutions, programmes and agencies, making it sometimes difficult to comprehend.³ The “umbrella” is the Common Security and Defence Policy (CSDP) (Article 42-47 TEU), which in turn is part of the EU's Common Foreign and Security Policy (CFSP). The CSDP is headed by the High Representative of the Union for Foreign Affairs and Security Policy, *Kaja Kallas*.⁴ The focus of the CSDP lies on crisis management *outside* the EU (Article 42(1) TEU). Within the CFSP and the CSDP, the Political and Security Committee (PSC) (Article 38 TEU) acts as the central monitoring organisation. It is composed of Member States' ambassadors, holds regular meetings with NATO and advises the Council. Similarly, the European Union Military Committee (EUMC), which is composed of the Member States' Chiefs of Defence (represented at the daily level by permanent Military Representatives) advises the High Representative and the PSC. The EUMC is not to be confused with the European Union Military Staff (EUMS), which is part of the European External Action Service (EEAS) (also headed by the High Representative) and thus the CFSP. The EUMS performs planning and assessment tasks and makes recommendations, *inter alia* to the High Representative and the EUMC. The European Defence Agency (EDA) is an intergovernmental agency reporting to the Council of the European Union and also headed by the High Representative. Its aim is to *inter alia* improve defence collaboration within the EU and to sustain and improve the CSDP. It has four defence initiatives aimed at improving cooperation: the Coordinated Annual Review on Defence (CARD), the European Defence Fund (EDF), the Military Planning and Conduct Capability (MPCC) and the Permanent Structured Cooperation (PESCO). The latter in particular, offers a forum for 26 of the 27 EU Member States to pursue structural integration (the missing state being Malta).⁵

The mutual defence clause's location in Article 42(7) TEU places it within the structure of the CSDP, which is characterized by competing responsibilities, a focus on intergovernmental structures and general restraint on the part of the EU. Significantly, as shown above, the EU's defence system is dominated by intergovernmental bodies and organisations. Decisions must

³ H. Virkkunen, ‘The EU's mutual defence clause? Article 42(7) of the Treaty on European Union’ 21(1) European View (2022) p. 22 at p. 24.

⁴ European Council / Council of the European Union, ‘EU High Representative for Foreign Affairs and Security Policy’, 24 March 2026, <<https://www.consilium.europa.eu/en/council-eu/high-representative-foreign-affairs-security-policy/>> visited 17 April 2026.

⁵ The establishment of PESCO was a reaction to statements from US-President Donald Trump that have raised doubts about whether the USA will continue to consider itself co-responsible for the defence of Europe.

be taken by intergovernmental institutions - the Council and the European Council - and not by supranational organs (e.g. the EP) (cf. Article 42(2), (3) and (4) TEU), reinforcing the authority of the individual Member States in this regard. The function of the mutual defence clause in this system and whether it can potentially close any gaps will be examined below.

C. Status Quo: Mutual Defence under Article 42(7) TEU

The mutual defence clause was first introduced by the Treaty of Lisbon and was the result of increasing attempts to create common European defence measures starting with the Treaty of Maastricht in 1993.⁶ Due to the organisation of European defence structures beginning in the late 1940s, the EU's new defence measures had to be integrated around the existing defensive structures, first and foremost NATO.⁷ The mutual defence clause states that if the territory of an EU Member State is a victim of armed aggression, the other Member States owe that state every assistance and support within their power. The fundamental obligation to provide support in times of crisis also arises from the principle of solidarity between the Member States (Article 4(3)(1) TEU). A clear state practice has not yet emerged, as the mutual assistance clause has only been invoked once, in 2015, by France following the terrorist attacks on the *Bataclan* in Paris.⁸ Although some Member States reacted with military help – Great Britain flew an armed attack with France against Syria and Germany sent a warship – only few Member States provided active assistance.⁹ Still, the invocation of the clause was unanimously approved in a meeting of EU defence ministers,¹⁰ even though this was not a prerequisite for the activation and only a symbolic act to show solidarity towards France.¹¹

D. Conditions and Scope of the Mutual Defence Clause

In the following section, the conditions and the scope of Article 42(7) TEU will be more closely examined.

⁶ S. Anton and C. Bogzeanu, 'A Comparative Analysis of Mutual Defense and Collective Defense Clauses' 57(4) Strategic Impact (2015) p. 7 at p. 8; M. Fischer, 'Article 42' in H.-J. Blanke and S. Mangiameli (eds.), The Treaty on European Union – A Commentary (Springer 2013) para. 3.

⁷ S. Graf von Kielmansegg, 'The Historical Development of EU Defence Policy: Lessons for the Future?', Verfassungsblog, 25 March 2019 <<https://verfassungsblog.de/historical-development-lessons-for-the-future%EF%BB%BF/>> visited 17 April 2026.

⁸ European Council on Foreign Relations, 'Article 42.7: An explainer', 19 November 2015, <https://ecfr.eu/article/commentary_article_427_an_explainer5019/> visited 17 April 2026; European Parliament Resolution (2015/3034(RSP) of 21 January 2016 on the mutual defence clause (Article 42(7) TEU) OJ C 011/09.

⁹ For an overview: supra n. 8.

¹⁰ Council of the European Union, 'Outcome of the Council Meeting', 16 November 2015, 14120/15 <<https://www.consilium.europa.eu/en/meetings/fac/2015/11/16-17/>> visited 17 April 2026.

¹¹ See further III. 2.

I. Armed Aggression on the Territory of a Member State

Article 42(7)(1) TEU requires an armed aggression on the territory of a Member State for the obligation of aid and assistance by other Member States to be triggered. It thus needs to be determined what the criteria and threshold for an act of armed aggression are. The wording “armed aggression” is significant in that it diverges from both the corresponding collective defence clause under Article 5 NATO-T and the self-defence clause of Article 51 United Nations Charter (UNCh), which is referenced in Article 42(7) TEU, both of which require an “armed attack” against a Member State. The divergent wording is particularly pertinent, as the UNCh distinguishes between armed attacks and “acts of aggression” (Article 39 UNCh). The TEU does not define “armed aggression” and literature on this criterion is sparse. While there is no universal definition of an “armed attack”, it is usually reserved for the gravest forms of the use of force,¹² whereas an (armed) aggression is usually considered to have lower requirements in public international law and to cover “lesser” military actions such as blockades or the consent of a state to be used as a base for military attacks against another state.¹³ Article 3 Annex I of the United Nations General Assembly Resolution 3314 (XXIX) from 1974 provides a commonly cited definition of aggression, which includes as examples “[t]he invasion or attack by the armed forces of a State of the territory of another State” (lit. a), but also actions such as the “blockade of the ports or coasts of a State by the armed forces of another State” (lit. c) or the “action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State” (lit. f).¹⁴

If the actions mentioned were sufficient to constitute an act of armed aggression under Article 42(7) TEU, the threshold for triggering the obligations of aid and assistance would appear to be significantly lower compared to Article 5 NATO-T (and Article 51 UNCh). The threshold under Article 42(7) TEU is also relevant with regard to the relationship between Article 42(7) TEU and Article 222 Treaty on the Functioning of the European Union (TFEU), which is considered the pertinent clause for attacks by non-state actors (i.e. terrorism).¹⁵ In case of *inter alia* a

¹² L. R. Blank, ‘Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict’ 96 NDLR (2020) p. 249 at p. 253.

¹³ D. Thym, ‘Article 42’ in H.-J. Blanke and S. Mangiameli (eds.), *The Treaty on European Union – A Commentary* (Springer 2013) para. 42.

¹⁴ United Nations General Assembly Resolution 3314 (XXIX), 1974, Article 3 Annex I.

¹⁵ D. Thym, *supra* n. 13, para. 45; see also C. Moser, ‘Awakening dormant law – or the invocation of the European mutual assistance clause after the Paris attacks’, *Verfassungsblog*, 18 November 2015 <<https://verfassungsblog.de/awakening-dormant-law-or-the-invocation-of-the-european-mutual-assistance-clause-after-the-paris-attacks/>> visited 17 April 2026.

terrorist attack, the affected Member State may request assistance from other Member States (Article 222(2) TFEU), which then “shall assist” the state. Furthermore, the EU itself is given the authority to mobilise its resources in support of the state, which include military resources that other Member States have made available (Article 222(1) TFEU).

While it has been suggested that the intention behind the phrasing of Article 42(7) TEU could be to bridge the gap between the requirements of the narrower clauses requiring military attacks for triggering collective defence measures and the general prohibition of the use of force,¹⁶ it is essential to further interpret this criterion. Context could be provided by comparing the English version of Article 42(7) TEU to other authoritative versions. The German language version of Article 42(7) TEU requires a “bewaffneter Angriff” (i.e. an armed attack) which is identical in wording to the German versions of Article 5 NATO-T and Article 51 UNCh (the German version not being an official version of the UNCh though). The French versions use the term “agression armée” (i.e. armed aggression) both in Article 42(7) TEU and Article 51 UNCh, while Article 5 NATO-T requires an “attaque armée” (i.e. an armed attack). The wording is thus all around incoherent both with regard to Article 42(7) TEU but also concerning Article 51 UNCh and Article 5 NATO-T within the respective languages.

A lower requirement for the activation of the mutual defence clause would undoubtedly strengthen the EU-clause’s individual importance, specifically when compared to Article 5 NATO-T. However, given the nature of the EU as an economic and political union, as opposed to the defensive nature of NATO, it is doubtful whether this was the intention behind the phrasing. Furthermore, if the criteria between the two clauses were different, this could hypothetically allow NATO members that are also EU Member States to invoke the EU-clause against other non-EU NATO members (e.g. Greece against Turkey¹⁷). It should therefore be concluded that the (English language) wording of Article 42(7) TEU is not intended to lower the activation threshold for the EU Member States’ obligations but rather intends for it to be in accordance with the rules of self-defence under public international law (i.e. Article 5 NATO-T and Article 51 UNCh).¹⁸

¹⁶ D. Thym, *supra* n. 13, para. 42.

¹⁷ B. Fox et al., ‘The Brief – What to do about Article 42 as Greek-Turkish tensions escalate’, Euractiv, 26 September 2022 <<https://www.euractiv.com/section/politics/news/the-brief-what-to-do-about-article-42-as-greek-turkish-tensions-escalate/>> visited 17 April 2026.

¹⁸ D. Thym, *supra* n. 13, para 43.

Lastly, Article 42(7) TEU requires the armed aggression to take place on the territory of a Member State. This extends the geographic scope of the provision to territories of Member States that may not be located within Europe. However, a restrictive interpretation would suggest that it only applies to those areas outside the European continent where EU law applies (e.g. the Canary Islands, the Azores or Martinique¹⁹).²⁰ This issue is especially important regarding Greenland, given the repeated insinuations of a possible American annexation of the Danish territory.²¹ While Greenland itself is not part of the EU, but part of the EU's Overseas Countries and Territories, it is an autonomous territory of Denmark. As such its foreign and defence policy is the responsibility of the Danish state. It also forms part of the Danish territory. Therefore, even if Greenland were unable to invoke the clause due to it not being a member of the EU, Denmark could be entitled to do so.

II. Obligation of Aid and Assistance by Member States

As mentioned, an armed attack on the territory of a Member State triggers an obligation of aid and assistance under Article 42(7) TEU, according to which the Member States “shall have [...] an obligation of aid and assistance by all the means in their power”. Before delving into the content of the clause as regards specific measures, the legal implications of the clause need to be clarified. While some consider the mutual defence clause to be merely a political obligation,²² others classify it as a legal duty.²³ With consideration to the wording – “have an *obligation*” –, a purely symbolic nature cannot be assumed. Additionally, as a norm in primary law, the clause does unambiguously have a binding legal effect.²⁴ Rather, the central question is what *scope* this obligation has.

The wording “aid and assistance” suggests that a variety of measures may be included. While military aid is not explicitly mentioned in the provision, it was still envisaged in the negotiations

¹⁹ European Commission, ‘The EU and its outermost regions’ <https://ec.europa.eu/regional_policy/policy/themes/outermost-regions_en> visited 17 April 2026.

²⁰ D. Thym, supra n. 13, para 46.

²¹ For a legal analysis of these threats see, A. Alemanno, ‘Greenland and US Annexation Threats’, *Verfassungsblog*, 13 January 2026, <<https://verfassungsblog.de/greenland-and-us-annexation-threats/>>; E. Bartmann and C. Jacobs, ‘Alle für eine*n? Bündnisfälle im EUV und Nordatlantikvertrag’, *JuWiss*, 19 June 2025, <<https://www.juwiss.de/55-2025/>> visited 17 April 2026.

²² W. Kaufmann-Bühler, ‘Article 42’ in E. Grabitz et al. (eds), *Das Recht der Europäischen Union: EUV/AEUV [The law of the European Union: TEU/TFEU]* (Beck 2024) para. 67–69; S. Marquardt and J.-C. Gaedtker, ‘Article 42’ in H. von der Groeben et al. (eds), *EU-Recht [EU law]* (Nomos 2024) para. 16.

²³ A. Mickonytė, ‘The Mutual Assistance Clause under Article 42(7) TEU. Considerations in Light of the Ukraine’s Quest for Membership’ 1(4) *Graz Law Working Paper* (2022), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4097998> visited 17 April 2026.

²⁴ D. Thym, supra n. 13, para 42.

on the Constitutional Treaty in 2004.²⁵ Four Member States which classify as neutral in terms of defence policy saw the deletion of an explicit reference to *military* aid as a necessary condition to sign the treaty. Even if military aid is explicitly mentioned in other treaties of defence alliances, this does not mean that military aid is not covered by Article 42(7) TEU at all. The systematic placement of the provision within the chapter on the CSDP indicates that military action is included. This is further emphasized by the reference to Article 51 UNCh. Art. 42(7) TEU takes into account the mutual defence obligations of many Member States within NATO, which include military support measures.

The second central question concerns the level of commitment of Member States. Mutual defence obligations can either be exactly defined or allow the parties discretion to decide whether and how to aid and assist. While the Western European Union clause²⁶, on which the EU mutual defence clause is based, established a strong obligation of support stating that the states “will afford all” the military and other aid and assistance in their power, Article 42(7) TEU is more general in nature. Under Article 42(7) TEU the Member States have an “obligation of aid and assistance by all the means in their power”. In contrast to NATO obligations, it is not sufficient to render only such assistance a state subjectively deems necessary. Rather, the duty extends to providing all assistance within the state’s means and capabilities — thereby imposing a more comprehensive and objective standard of conduct. As a result, the scope for discretion is significantly narrowed. The level of obligation is thus higher than in the NATO-T, which offers broader discretion. The fact that assistance within the EU is mandatory, unlike support within the NATO alliance, can be attributed in part to the unique status of the EU as a supranational organisation. Over time, the EU has increasingly coalesced through advanced integration, transforming from its initial economic alliance into a political entity that collaborates comprehensively and is founded on common values. The close interconnectedness of Member States naturally plays a role in determining the extent of mutual assistance. The obligation to aid and assist applies to all EU Member States in principle. However, since defence policy is a very sensitive political area, opt-outs are possible. Some Member States have reserved a special status in this regard, which allows them to engage in mutual defence to varying degrees²⁷ Whether Member States would actually invoke their policy of neutrality in

²⁵ Draft TCE refers to “military and other aid and assistance”, see supra n. 13, para 49.

²⁶ The basis of the mutual defence clause was Article 5 of the Brussels Treaty on the Western European Union, whose contents were incorporated into the CSDP with the Treaty of Lisbon.

²⁷ For an overview: C. S. Cramer and U. Franke, ‘Ambiguous alliance: Neutrality, opt-outs, and European defence’, European Council on Foreign Relations, 28 June 2021 <<https://ecfr.eu/publication/ambiguous-alliance-neutrality-opt-outs-and-european-defence/>> visited 17 April 2026.

the event of an attack by a subject of international law on the territory of another EU Member State is doubtful.

III. Military Aid Owed?

The inference that military assistance must be provided upon request by a Member State cannot be drawn from Article 42(7) TEU. Firstly, the wording does not support this interpretation. In contrast to the Western European Union clause, military assistance is not explicitly mentioned in the Treaty of Lisbon. Additionally, this cannot be inferred from systematic considerations. While the mutual assistance clause is located in Section V TEU, actions in this area are not necessarily of a military nature. Finally, the so-called “Irish Clause”²⁸ also argues against a military obligation: Article 42(7)(2) TEU states that the specific character of the defence policy of certain Member States remains unaffected. If there was an obligation to assist militarily, politically neutral states²⁹ or those unwilling to participate³⁰ in military actions would be forced into a breach of the treaty or would have to act against their foreign policy convictions. This would clearly contradict the fundamental principles of the EU like the principle of subsidiarity, the equality of the Member States and the principle that national security remains a matter for the Member States, Article 4(1,2) TEU. Based on the current wording, the decision to provide military assistance is left to the discretion of the governments of the respective states. From the principle of loyal cooperation laid down in Article 4(3)(1) TEU, no further obligation to provide assistance in the field of defence may be derived either. In this sensitive area, obligations should be delineated and clearly defined rather than determined by vaguely formulated principles. Moreover, an obligation of military assistance drawn from this principle would not be compatible with the neutrality policy of some states. With this interpretation, traditionally neutral or non-aligned Member States have the opportunity to provide non-military assistance, thus fulfilling their obligations under the European treaties while remaining true to their foreign policy.

A legal obligation to provide military aid would also prove challenging under the distinct legal systems of the Member States, specifically with regard to military operations, which constitute sensitive issues that usually require multiple levels of authorisation by national authorities.

²⁸ *C. S. Cramer and U. Franke*, supra n. 27.

²⁹ The traditionally neutral states are Austria, Finland, Sweden, Malta, Cyprus and Ireland. While it can be expected that with Finland and Sweden joining NATO they will not resort to neutrality when it comes to Article 42(7) TEU, there remain four states that would likely not participate in military actions.

³⁰ Denmark is a member of NATO and therefore not neutral. However, in 1993 following a referendum it opted out of an EU defence: *C. S. Cramer and U. Franke*, supra n. 27.

Even countries that are not traditionally neutral and generally open to military assistance under Article 42(7) TEU may face domestic challenges to the foreign deployment of their troops, depending on the procedure required to authorise such deployments. In certain Member States, like France, the decision to deploy military forces abroad lies solely with the Government. In France, the decision is made by the French Government, whereas the French Parliament only needs to be informed (Article 35(2)(1) Constitution française). Parliamentary approval is only needed for deployments exceeding four months (Article 35(3) Constitution française). In other countries, however, participation of the legislative branch is required to authorise foreign deployments of troops. In Austria, for example, the Federal Government, or a Federal Minister authorised by it, is responsible for deploying the Austrian armed forces for the purpose of *inter alia* solidary participation in measures within the framework of the CSDP, in agreement with the Main Committee (“Hauptausschuss”) of the National Council (Article 185(2) Bundes-Verfassungsgesetz). Even stricter requirements exist in Germany, where foreign deployments of the German army must be authorised by the federal parliament, the Bundestag, with a majority of the votes cast.³¹ In its decision on *inter alia* the compatibility of the Treaty of Lisbon with the German constitution, the German Constitutional Court ruled that while Article 24(2) Grundgesetz allows for the German integration into a system of collective defence (e.g. the EU), the need for parliamentary approval of foreign deployments of the German army is not subject to the legal integration of national and EU law and remains a competence of the German state.³² The court argued that the wording and drafting history of Article 42 *et seq.* TEU clearly shows the Member States’ desire to retain the sovereign decision on the deployment of their armed forces.³³ Even though national legal perspectives cannot, of course, be used to interpret the EU law provision of Article 42(7) TEU, they may provide insight into the practical obstacles that need to be considered when providing military support to Member States during actual activation. For at the national level, decisions on support measures must be made in accordance with the respective legal requirements.

In summary, it can be stated that Member States have discretionary powers to determine the nature and type of support, which may include non-military assistance. Article 42(7) TEU does not dictate to Member States the specific type of assistance they must provide. While the wording “by all means in their power” leads to a fundamentally high level of obligation in

³¹ BVerfG 30 June 2009, 2 BvE 2/08, Lissabon paras. 255 ff; J. Kokott and D. Hummel, ‘Art. 87a GG’ in M. Sachs (ed.), Grundgesetz, 9th edn. (Beck 2021) para 42.

³² BVerfG 30 June 2009, 2 BvE 2/08, Lissabon para. 255.

³³ BVerfG 30 June 2009, 2 BvE 2/08, Lissabon para. 384.

contrast to NATO (see above), it still leaves the Member States a margin of discretion with regard to the extent of the assistance they can provide.³⁴ The obligation of assistance can be fulfilled through indirect forms of aid like provision of medical supplies and food assistance. There is thus a discrepancy³⁵ between the common assumption that both the NATO and EU mutual assistance clauses act as a kind of guaranteed military support mechanism between state parties that would turn bilateral conflicts into multi-state wars³⁶, and the actual content of these clauses.

IV. Taking into Account International Legal Obligations: Article 51 UNCh

Article 42(7) TEU requires the obligation of aid and assistance by the Member States to be in accordance with Article 51 UNCh. Article 51 UNCh limits the right to self-defence by stating that it may only be carried out “until the Security Council has taken measures necessary to maintain international peace and security”. In addition, any self-defence measures taken shall be immediately reported to the Security Council and shall not affect the Security Council’s authority to maintain or restore international peace and security.

The reference to Article 51 UNCh in Article 42(7) TEU could thus serve the purpose of guaranteeing compliance with the processes of international peacekeeping. However, this raises the question of why this explicit reference is necessary at all. An answer could be provided by the relationship between public international law and EU law. According to Article 216(1) TFEU, the EU may conclude international agreements with third countries or international organisations, which take precedence over secondary EU law.³⁷ The EU is not a party to the UNCh, though all of its 27 Member States are. The explicit requirement of Article 42(7) TEU to be in accordance with Article 51 UNCh could thus be necessary to guarantee compliance on the EU level, and, in particular, secure the role of the UN Security Council. Since all EU Member States are bound by the UNCh, this inclusion is important because the TEU could

³⁴ R. Bieber et al., *Europarecht* (8th edn, Nomos 2009) 600; D. Thym, ‘GASP und äußere Sicherheit’ [CFSP and external security] in A. von Arnould and Marc Bungenberg (eds), *Enzyklopädie Europarecht, Band 12: Europäische Außenbeziehungen* [Encyclopedia of European Law, Volume 12: European External Relations] p. 1129 at p. 1247 *et seq.*

³⁵ D. Reiter and B. Greenhill, ‘Joining NATO binds countries to defend each other – but this commitment is not set in stone’, *The Conversation*, 18 June 2024 <<https://theconversation.com/joining-nato-binds-countries-to-defend-each-other-but-this-commitment-is-not-set-in-stone-227642>> visited 17 April 2026.

³⁶ It is often assumed that in the event of a NATO alliance case, entering the war is mandatory., e.g. *Deutschlandfunk*, 5 July 2023 <<https://www.deutschlandfunk.de/beistandsklausel-eu-ukraine-russland-krieg-100.html>> visited 17 April 2026.

³⁷ EC 6 October 2011, Case C-366/10, *Air Transport Association of America and others v Secretary of State for Energy and Climate Change*, ECLI: ECLI:EU:C:2011:864, para. 50.

otherwise trump rules of public international law, such as Article 51 UNCh, in certain legal systems, like Germany. In Germany, EU primary law has prevalence over ordinary federal laws and the constitution.³⁸ International treaties are commonly considered to have the same effect as federal laws, once they have been translated into national law (Article 59(2)(1) GG). Although Article 25 GG postulates that certain “common rules of international law” override federal law without having to be transcribed into national law, this rule needs to be applied restrictively; it would likely include Article 2(4) UNCh as *ius cogens*, but not Article 51 UNCh.³⁹ The reference to Article 51 UNCh thus establishes coherence with the prohibition of the use of force. As a legal organisation, it is a concern for the EU to ensure that its treaties do not contradict crucial aspects of international law. Given the impact that an armed attack would have on a Member State, it is clear that any assistance would have to be in accordance with the right to self-defence enshrined in Article 51 of the UNCh. By linking Article 42(7) TEU to Article 51 UNCh, the latter becomes a legal basis not only for the attacked state but for any actions taken by all other EU states as well.

E. Mutual Defence vs. Common Defence: Relation to Article 5 NATO-T

Next, the significance of Article 42(7) TEU and Article 5 NATO-T and their relevance for actual defensive measures will be examined. A decisive difference lies in the nature of the alliances. While NATO was created primarily as a defence alliance (Article 5 NATO-T being the “raison d’être”), the EU is an economic union, where security and defence politics only became issues later on.⁴⁰ The declaration of a NATO alliance case must be determined through an unanimous decision within the NATO Council. On the other hand, within the EU framework, the obligation to provide aid takes effect *ipso iure*. The obligation arises upon meeting the legal conditions; no Council decision is required.⁴¹ In contrast, NATO takes on an active and coordinating role if the mutual assistance clause is activated whereas the EU cannot play this role due to the current competence structure.⁴² Article 42(7) TEU does not create an obligation for the EU to provide specific types of support, with measures rather being taken by each Member State individually. However, the EU can provide supportive action within the scope of its capabilities. The EU and Member States are aware of these differences: Even after the

³⁸ Although the German Federal Constitutional Court has recognized exceptions to this rule, see BVerfG 30 June 2009, 2 BvE 2/08, Lissabon para 240; BVerfG, 15 December 2015, 2 BvR 2735/14, Identitätskontrolle para 41 *et seq*; BVerfG 6 November 2019, 1 BvR 276/17, Recht auf Vergessen II para 47 *et seq*.

³⁹ S. Talmon, ‘Die Grenzen der Anwendung des Völkerrechts im deutschen Recht’ [The limits of the application of international law in German law] 68 JZ (2013) p. 12.

⁴⁰ S. Graf von Kielmansegg, *supra* n. 7.

⁴¹ The Council decision following the attacks in Paris was symbolic in nature.

⁴² CSDP measures as such would be “non-Article 5 operations” at the NATO level.

introduction of Article 42(7) TEU, the NATO-T remains the foundation of the Member States' defence.⁴³ This raises the question of what relevance the mutual assistance clause actually holds, particularly when compared to NATO.

Firstly, the defence clauses have slightly different prerequisites (see above). Secondly, differences lie in the obligation to provide support. In this regard, the NATO-T includes an explicitly discretionary element: Article 5 states that the NATO parties take "such action as [they] deem [...] necessary." The EU's defence clause extends further by encompassing an *obligation* to provide assistance. Furthermore, the close interconnectedness of the Member States also plays a role. While NATO, as a defence alliance, has many Member States that are militarily equipped and ready for action, it is important to consider that many of its members have wildly differing views on domestic and foreign policies, even more so than divisions between EU Member States. For instance, the reliability of the United States significantly depends on the incumbent president. This may weaken the reliability of NATO allies, as their commitment may vary. Despite these developments, the "NATO first" principle remains dominant in European defence policy.⁴⁴ In its current state, the EU is not a defence union and does not have the same capacities as NATO to react to an attack. With Sweden and Finland joining NATO,⁴⁵ four Member States remain non-members: Austria, Malta, Cyprus, and Ireland. For these states, Article 42(7) TEU represents the sole avenue to request support in defence.⁴⁶

F. Mutual Defence or Solidarity: The Relation to Article 222 TFEU

Alongside the mutual defence clause, support from other EU Member States can also be requested under Article 222 TFEU. According to the so-called *solidarity clause* "[t]he Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack [...]. The Union shall mobilise all the instruments at its disposal [...] to: [...]"

⁴³ Article 42(7)(2) TEU; Consolidated version of the Treaty on European Union Protocol (No 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union (2008) Official Journal 115, P. 0275 - 0277.

⁴⁴ See *L.-M. Heimeshoff*, 'Beistands- und Solidaritätsklausel im Vertrag über eine Verfassung für Europa' [Assistance and solidarity clause in the Treaty establishing a Constitution for Europe] in *M. Niedobitek* and *S. Ruth* (eds), *Die neue Union [The new Union]* p. 75 at p. 82 *et seq.*

⁴⁵ *T. Lawrence* et al., 'The Newest Allies: Finland and Sweden in NATO', *ICDS*, 12 March 2024 <<https://icds.ee/en/the-newest-allies-finland-and-sweden-in-nato/>> visited 17 April 2026; for details regarding the membership see *H.A. Bengtsson*, 'NATO membership decisions in Sweden and Finland during the Russo-Ukrainian War' in *L. Andor* and *U. Optenhögel* (eds.), *Europe and the War in Ukraine: From Russian Aggression and to a New Eastern Policy* (London Publishing Partnership 2023) p. 147 *et seq.*

⁴⁶ Additionally, the mutual defence clause can be helpful when civilian assistance for internal stabilization is required.

assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack” (see Article 222(1) TFEU).⁴⁷ As with the mutual defence clause, there is no *de jure* obligation. If a Member State is the object of a terrorist attack, the other Member States shall assist it at the request of its political authorities (Article 222(2) TFEU).

The solidarity clause does not provide a basis for military aid and intervention. Therefore, the risk of circumvention must be taken into account if the mutual defence clause is applied in a case where the conditions of the solidarity clause in the variant of a terrorist attack are met, because potentially higher justification requirements exist for Article 42(7) TEU. A distinction of the two norms is thus of great importance. Article 222(2) TFEU encompasses *inter alia* terrorist actions within the EU and therefore actions from non-state actors and non-international organisations. Article 42(7) TEU, on the other hand, is conceptually designed for inter-state aggression and requires the attack to originate from a subject of international law, firstly through the reference to Article 51 UNCh. This reference also implies adherence to the principles of international law regarding the prohibition of the use of force and questions of attribution. Secondly, without this requirement, a clear distinction between the two clauses would no longer be possible, and the scope of application of Article 222 TFEU would become null.⁴⁸ It may therefore be concluded that in the event of a terrorist attack on the territory of a Member State that cannot be attributed to any state, Article 222(2) TFEU is to be applied. In this variant, the clause also includes support measures for defence.

G. Establishing a “fully-fledged” Defence Union within in the meaning of Article 42(2)(2),(3)?

While NATO still plays a relevant role in security policy, there have been increasing efforts by the EU in recent years to strengthen its own role in defence policy.⁴⁹ Already in 2017, the then President of the European Commission, *Jean-Claude Juncker*, spoke about the necessity of a fully-fledged “European Defence Union”.⁵⁰ The European Commission President, *Ursula von*

⁴⁷ To understand what constitutes a terrorist attack in this sense, one must refer to the European Parliament and Council Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] L 88/6.

⁴⁸ See *I. Gillich*, ‘EU-Beistandsklausel und Solidaritätsklausel im Lichte der Terroranschläge von Paris’ [EU mutual assistance clause and solidarity clause in light of the terrorist attacks in Paris] 55 *Archiv des Völkerrechts* (2017) p. 43 at p. 60.

⁴⁹ For an overview see *F. Nicoli et al.*, ‘What would Europeans want a European defence union to look like?’ (2023) Bruegel Working Paper 9/2023, 2f <https://www.bruegel.org/sites/default/files/2023-06/WP%2009_0.pdf> visited 17 April 2026.

⁵⁰ *J.-C. Juncker*, ‘State of the Union Address’ (2017) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165> visited 17 April 2026.

der Leyen, recently reiterated this demand⁵¹ and French President *Emmanuel Macron* has called for “strategic autonomy”⁵² for the EU. Since Russia’s invasion of Ukraine and its foreign policy threats, especially towards Finland and Sweden before their NATO membership, demands for strengthening the mutual defence clause have been raised. However, since defence policy, including issues of armament, military alliances, etc., touches upon a very sensitive area, closer integration in this realm is difficult and prone to conflict.⁵³ The limitations set out by the domestic legal orders must be considered as well. The German Federal Constitutional Court stated that defence must remain under control of the nation states.⁵⁴ Additionally, the neutrality policies of some states conflict with the EU’s ambition of becoming a Defence Union as neutral states generally don’t want to join defence alliances. In this connection, concerns have been raised with neutral states joining the EU.⁵⁵ Since the Treaty of Lisbon, this perceived contradiction has been addressed through the Irish Clause (see above). The challenge of reconciling the goal of a closer defence union with the special status of some Member States is one that the EU and its Member States must grapple with. Alongside the reservations of some Member States, the concerns of the general population must also be considered. These reservations may, among other reasons, help explain why the EU had not taken more steps towards military integration prior to 2022, despite the issue having been relevant for some time.⁵⁶ Eurosceptic politicians utilize the topic of defence to stoke rejection of the EU, e. g. during the Brexit debates.⁵⁷ The discussion regarding the possibility of an EU army dates back to the 1950s.⁵⁸ As horrific as the war against Ukraine is, the current crisis may illustrate the advantages of a united EU defence policy and enable even closer cooperation.⁵⁹

I. Amendment Proposal of the European Parliament

⁵¹ *U. von der Leyen*, ‘Keynote address: Defence in the geopolitical Commission’ (European Defence Agency’s annual conference, Brussels, 30 November 2023) <<https://eda.europa.eu/news-and-events/news/2023/11/30/president-von-der-leyen-unveils-plans-for-defence-industrial-strategy-at-eda-conference>> visited 17 April 2026.

⁵² *J. Anderlini* and *C. Caulcutt*, ‘Europe must resist pressure to become ‘America’s followers,’ says Macron’, *Politico*, 9 April 2023 <<https://www.politico.eu/article/emmanuel-macron-china-america-pressure-interview/>> visited 17 April 2026.

⁵³ *F. Nicoli* et al., supra n. 49; The limitations set out by the legal orders must be considered as well. The German Federal Constitutional Court stated that defence must remain under control of the nation states: BVerfG 30 June 2009, 2 BvE 2/08, Lissabon para. 255.

⁵⁴ BVerfG 30 June 2009, 2 BvE 2/08, Lissabon para. 255.

⁵⁵ *C.S. Cramer* and *U. Franke*, supra n. 27.

⁵⁶ Eurosceptic politicians utilize the topic of defence to stoke rejection of the EU. Fear of an EU army also played a central role in Brexit, *F. Nicoli* et al., supra n. 49. Some EU members discussed the possibility of an EU army as early as the 1950s: *C. S. Cramer* and *U. Franke* supra n. 27.

⁵⁷ *F. Nicoli* et al., supra n. 49.

⁵⁸ *C.S. Cramer* and *U. Franke*, supra n. 27.

⁵⁹ For an analysis of studies on the support of EU-Defence in times of crisis see *F. Nicoli* et al., supra n. 49 p. 11 *et seq.*

In November 2023 the EP passed a resolution on earlier proposals for the amendment of the European Treaties.⁶⁰ It includes, *inter alia*, a suggestion for the amendment of Article 42 TEU.⁶¹ These amendments propose a variety of changes strengthening the defensive character of the EU, such as the formal establishment of a “Defence Union” in Article 42(3) TEU, which “shall include military units [...] under operational command of the Union” (cf. Amendment 52). The Defence Union also becomes relevant in the changes proposed for Article 42(7) TEU, which will be briefly examined below. Amendment 55 of Article 42(7) TEU states that

“[i]f a Member State is the victim of aggression, the Defence Union and all 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. An armed attack on one Member State shall be considered to be an attack on all Member States. This shall not prejudice the specific character of the security and defence policy of certain Member States.”

Under the suggested Article 42(7) TEU, the obligation of aid and assistance extends not only to other Member States, but also to the Defence Union itself, which is obliged to support the state. Furthermore, the requirements for reaching the activation threshold have been lowered. While the current version requires an act of *armed* aggression, the amendment would only require an *aggression*. Another crucial development are the proposed changes to sentence 2 of Article 42(7) TEU, which postulates that an *armed attack* on one Member State shall be considered to be an attack on all Member States. The wording of this phrase invokes Article 5(1) NATO-T, not only with regard to the threshold of aggression but also the response it would provoke. The draft version of sentence 2 of Article 42(7) TEU could indicate that an armed attack on one Member State could trigger self-defence measures by all other Member States. Interestingly, however, unlike Article 5(1) NATO-T, Article 42(7)(2) TEU does *not* state that any assistance measures by the Member States would be in exercise of the right of individual or collective self-defence recognised by Article 51 UNCh and only include actions deemed necessary by the respective parties. It thus lacks the limiting reference to Article 51 UNCh, as well as the provision that possible actions, such as the use of armed force, remain at the

⁶⁰ European Parliament Resolution 2022/2051(INL) of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties [2023], <https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.html> visited 17 April 2026. The EP’s proposed amendments were discussed at the summit of the European Council in December 2023 (European Council, ‘Meeting (14 and 15 December 2023) – Conclusions’ EUCO (2023), CO EUR 16, CONCL 6 <<https://www.consilium.europa.eu/en/meetings/european-council/2023/12/14-15/>> visited 17 April 2026. The European Council decided to address the reform proposals at upcoming meetings, “with a view to adopting by summer 2024 conclusions on a roadmap for future work”. Whether and how this will take place, remains to be seen.

⁶¹ Supra n. 60 cf. Amendments 51-55, including the amendment of Article 42(7).

discretion of the other parties. However, if read in conjunction with Article 42(7)(1) TEU, the earlier reference to Article 51 UNCh in Article 42(7)(2) TEU could be considered to extend to Article 42(7)(2) TEU, the armed attack of Article 42(7)(2) TEU thus being *lex specialis* to Article 42(7)(1) TEU. Given that the threshold under Article 42(7)(1) TEU was lowered from an *armed aggression* to an *aggression*, this case should be considered to include lower-level actions that would also constitute a violation of the principle of non-intervention under Article 2 No. 7, No. 1 UNCh. The acts of aggression must also be distinguished from the “threats” that may provoke a response of the Defence Union under the proposed version of Article 42(1) TEU, and which are specified in the proposed amendment of Article 43(1) TEU to include “hybrid threats and warfare, energy blackmail, cyberthreats, disinformation campaigns and economic coercion by third countries”⁶². This would suggest that the threshold for an “aggression” under the new Article 42(7)(1) TEU lies somewhere between an armed attack and a threat.

The proposed reforms are intriguing, especially because foreign policy, and defence policy in particular, are sensitive areas for a state. It is, however, questionable whether these legislative changes are merely symbolic or actually alter the level of Member States’ commitment. Specifically, the introduction of the phrase “an attack on one state would constitute an attack on all” raises the question of whether an attack on one Member State would mean that all other Member States would automatically also become parties to the conflict and thus be at war with the aggressor (state). To better understand the practical consequences of this proposal, context may be provided by Article 5 NATO-T, which contains identical wording. With regard to this clause, it is disputed whether an attack on one state places all other states at war.⁶³ While the wording “attack on all” *prima facie* supports the interpretation that all (assisting) state parties would also be at war, further steps are generally necessary to trigger a duty of assistance and subsequent military operations.⁶⁴ According to the rules of international law, providing weapons to a state under attack does not constitute the act of entering a war.⁶⁵ However, deploying troops to participate in combat operations does.⁶⁶ The specific type of assistance is

⁶² Supra n. 60, Draft version of Article 43(1) TEU, Amendment 56.

⁶³ Argues against: *R. Bernal*, ‘What is Article 5 of the NATO treaty?’, The Hill, 15 November 2022 <<https://thehill.com/policy/international/3736968-what-is-%20article-5-of-the-nato-treaty/>> visited 17 April 2026.

⁶⁴ Among other things, the NATO Council must decide on the invocation of the alliance’s collective defence clause.

⁶⁵ *A. Wentker*, ‘At War: When do States Supporting Ukraine or Russia become Parties to the Conflict and what would that mean?’, Blog of the European Journal of International Law, 14 March 2022 <<https://www.ejiltalk.org/at-war-when-do-states-supporting-ukraine-or-russia-become-parties-to-the-conflict-and-what-would-that-mean/>> visited 17 April 2026.

⁶⁶ Deutscher Bundestag, Wissenschaftliche Dienste des Deutschen Bundestages, Militärische Unterstützung der Ukraine: Wann wird ein Staat zur Konfliktpartei? [Research and Documentation Services of the German

therefore crucial. This suggests that allied states want to keep their options open, determining the extent of their involvement and whether they become a party to a conflict, depending on the situation. This would indicate that states do not want to detach themselves from these gradations through the statement “attack against one is an attack against all”. Rather the phrase serves as an affirmation of the duty to assist. Furthermore, an automatic mechanism through which even Member States not directly involved in a conflict would automatically become parties to it would pose serious risks for these states, as they could be considered legitimate targets for the attacking state under international peacekeeping law.⁶⁷ Hence, it seems more likely that this statement simply aims to strengthen solidarity among the Member States.

What remains unchanged by the proposed amendments is that the mutual defence provisions under Article 42(7) TEU shall not prejudice the specific character of the security and defence policy of certain Member States. Furthermore, the question arises, whether, and if so how the neutrality policy of individual states (e.g. Ireland and Austria⁶⁸) would be invoked in the case of an actual attack on a Member State. Even if the amendments were to remain largely symbolic, they could still impact the perception of the EU on the world stage and as a participant in armed conflicts.

II. A Question of Competences

The proposed “Defence Union” would itself have the obligation of aid and assistance towards the Member State in need, alongside the Member States. While the Union promotes solidarity between the Member States (cf. Article 3(3)(5) TEU), this obligation only exists within the framework of the existing competences. Any extension of the European Union’s authority to act in the field of defence — including actions pursuant to Article 42 TEU — might require changing the treaties. Regarding the status quo, Articles 2 to 6 TFEU include no explicit reference to a competence of the EU in the area of defence. Defence remains an exclusive competence of the Member States (cf. Articles 4(1), 5 TFEU). However, Article 24(1) TEU, which regulates the CFSP, states that the EU has a competence in matters of common foreign and security policy, which covers inter alia “all questions relating to the Union's security,

Bundestag, Military support for Ukraine: When does a state become a party to the conflict? (WD 2-3000-023/23, 2023) 17, <<https://www.bundestag.de/resource/blob/957632/44633615ad0618f5cd38c35ad0a30fe4/WD-2-023-23-pdf.pdf>> visited 17 April 2026.

⁶⁷ Deutscher Bundestag, Wissenschaftliche Dienste des Deutschen Bundestages, Konfliktpartei im Ukrainekrieg und NATO-Bündnisfall [Research and Documentation Services of the German Bundestag, Party to the conflict in the Ukraine war and NATO alliance case] (WD 2 - 3000 - 021/24, 2024) 7 <<https://www.bundestag.de/resource/blob/996556/81817aa12807264506cbc0a35566f52a/WD-2-021-24-pdf.pdf>> visited 17 April 2026.

⁶⁸ D. Thym, *supra* n. 13, para 50 *et seq.*

including the progressive framing of a common defence policy that might lead to a common defence.” As is made clear by Article 42(1) TEU, the CSDP is part of the CFSP and thus also falls within the competences of the EU. When examining the EU’s competences in defence policies, it is also worth looking at Article 42(2) TEU. It states, that “the common security [...] policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.” Even though Article 42 uses the term “will” rather than “might”, this does not alter the fact that any expansion of the EU competences remains contingent upon a decision by both the European Council and the Member States. However, the likelihood of this change being adopted is highly questionable. It is unlikely that Member states want to relinquish their ability to veto measures in the area of common foreign and security policy with a single dissenting vote.

III. Practical Questions of the Clause’s Implementation

The declaration of a Defence Union raises several questions concerning the practical implementation. In the event of an attack within the NATO system, a situation requiring mutual defence needs to be recognized by unanimous decision by the North Atlantic Council. According to Article 24(1)(2) TEU, the EU institutions responsible for defining and implementing defence measures aimed at the gradual framing of a common defence policy, which may lead to a common defence, are the European Council and the Council. While the TEU currently requires unanimous voting in this regard (with the exemption of the adoption of legislative acts), the EP has proposed changing unanimity to qualified majority.⁶⁹ While this would enhance the reactive capabilities of the EU with regard to defence policy, it touches on the competences and the sovereignty of the Member States. It likewise appears highly unlikely that the Member States will consent to any deviation from the unanimity requirement.

While under the proposed reform the Defence Union itself is obliged to support the Member State in question, the question arises whether the Defence Union would have similar discretion in deciding the nature of aid and assistance as the Member States. How exactly, and by which institution, such a decision would be taken remains unclear in the proposed amendment. Against this backdrop, a decision of activation can likely only be made unanimously. In particular, the obligation of the Defence Union and the (symbolic) declaration of an attack against all can only

⁶⁹ Supra n. 60.

be reconciled with the different Member States' policies in this way. Furthermore, restrictions remain, as decisions concerning the specifics of military deployment as part of Article 42(7) TEU (e.g. the foreign deployment of troops) remain an exclusive competence of the Member States.⁷⁰

The proposal does not provide any details regarding structural changes brought about by the Defence Union. However, it is conceivable that the EU could establish its own command structure, with Member States contributing troops. Proposals for a joint European army have also been discussed more frequently in recent times.⁷¹ In any case, the strengthening of intra-European defence raises the question of NATO's role. With ever-closer cooperation among Member States, the principle of "NATO-first" would inevitably diminish in significance. However, this is a political decision which certainly also depends on the threat situation and the reliance on NATO partners. From a legal perspective, the constitutional values and fundamental principles of the EU must be considered.

In summary, it can be concluded that with regard to defence policy, the EU acts in a strictly intergovernmental rather than supranational capacity. To take steps towards closer cooperation, the EU depends on the consent of all Member States, which could be particularly challenging in the case of neutral states.

H. Consequences of the Mutual Defence Clause for Ukraine's EU-Membership

When discussing Ukraine's accession to the EU, the ongoing war waged by Russia is often cited as a major obstacle.⁷² Should Ukraine become a Member State before the conflict is settled, it seems at least probable that Ukraine would invoke the mutual defence clause and seek support from the other EU Member States. Given the reluctance to admit Ukraine into NATO until the war with Russia has ended,⁷³ the mutual defence clause likely plays a similar part in

⁷⁰ BVerfG 30 June 2009, 2 BvE 2/08, Lissabon paras. 255.

⁷¹ *S. Horn and S. Cooper*, 'Does the EU need a European Army?', *Zeit Online*, 25 March 2024 <<https://www.zeit.de/gesellschaft/2024-03/europe-talks-2024>> visited 17 April 2026; *B. Leimand*, 'Towards a European Army?', *European Security & Defence*, 13 June 2024 <<https://euro-sd.com/2024/06/articles/38665/towards-a-european-army-2/>> visited 17 April 2026.

⁷² *Deutschlandfunk*, 'Wie stehen die Chancen auf einen schnellen EU-Beitritt?' [What are the chances of joining the EU quickly?], *Deutschlandfunk*, 9 November 2023 <<https://www.deutschlandfunk.de/ukraine-eu-beitritt-stand-100.html>> visited 17 April 2026; *S. Besch and E. Ciaramella*, 'Ukraine's Accession Poses a Unique Conundrum for the EU' *Carnegie Endowment for International Peace*, 14 October 2023 <<https://carnegieendowment.org/research/2023/10/ukraines-accession-poses-a-unique-conundrum-for-the-eu?lang=en>> visited 17 April 2026.

⁷³ *BBC*, 'What is Nato, which countries are members and how much do they spend on defence?', *BBC*, 23 April 2024 <<https://www.bbc.com/news/world-europe-18023383>> visited 17 April 2026.

the EU's reluctance to admit Ukraine before the war is over.⁷⁴ The mutual defence obligation thus becomes an increasingly important factor in determining the potential EU membership of certain countries, with Member States, understandably, reluctant to invite a war and potentially a support obligation into the EU.

However, both the EU and many of its Member States have already been providing extensive support to Ukraine since February 2022. This support includes both military and other forms of assistance.⁷⁵ These states are currently under no obligation to provide assistance; rather, they assist voluntarily out of solidarity with Ukraine and to protect European values. In this regard, Ukraine's accession would likely not lead to significant practical changes, as the obligations under the mutual defence clause are already largely being fulfilled and military deployment of troops remains at the discretion of the Member States in any case. As shown above, Member States are neither required to provide military assistance or enter into the war, nor do they automatically become parties to a conflict if another Member State is attacked. The concern that other EU Member States would automatically become parties to the war is therefore unfounded, even under the proposed amendment to Article 42(7) TEU. However, the potential retaliatory measures that Russia might take towards other Member States due to Ukraine's EU membership cannot be conclusively determined. The mutual defence clause will thus likely continue to pose a challenge to Ukraine's EU membership until the war has ended.

I. Conclusion

The mutual defence clause under Article 42(7) TEU effectively establishes a defence *alliance* between EU Member States, although not a defence *organisation*. While NATO continues to serve as the cornerstone of defence in Europe, the mutual defence clause is a substantive reactive tool for intergovernmental assistance in case of an act of armed aggression against an EU Member State. As shown above, the Member States have less discretion regarding their duty to provide assistance compared to NATO allies. At the same time, the clause acknowledges that foreign policy is a politically sensitive area and national security and defence policy choices have to be respected. If military support is provided, the international legal requirements must be strictly adhered to.

⁷⁴ Of course, there are many other requirements that Ukraine needs to fulfill, e.g. fulfillment of the Copenhagen Criteria. See further: *M. Kosmehl* and *S. Weiss*, 'Too poor, too large, not ready? What is the state of Ukraine's preparedness for the EU accession process?', Bertelsmann Stiftung, 13 December 2023 <<https://www.bertelsmann-stiftung.de/en/our-projects/sovereign-europe/project-news/translate-to-english-zu-arm-zu-gross-nicht-bereit-wie-steht-es-um-die-eu-beitrittsfaehigkeit-der-ukraine>> visited 17 April 2026.

⁷⁵ For an overview see *A. Mickonytė*, *supra* n. 23, p. 15ff; *E. Bartmann* and *C. Jacobs*, *supra* n. 1.

The mutual defence clause's importance in shaping the security policies of Member States warrant a critical exploration and further deliberation, specifically with regard to its practical consequences. These consequences also require a serious examination of prospective EU Member States, but must not become an obstacle to membership. Overall, the EU must become more resilient and capable in terms of defence, a development which is currently hindered by the varying commitments of the different Member States and unclear wording on the conditions and consequences of the defence clause. The EP's proposed amendment of Article 42(7) TEU can be seen as a move in the right direction, though questions remain, particularly regarding the division of competences, the EU's concrete role in case of an actual incident and the effects on neutral states. While a strengthened and capable EU is to be welcomed, increased defensive effectiveness must be balanced against the sovereignty of the Member States in this area. Only in this way will the EU be able to counteract the global dangers of our time in a legitimate and resilient manner.

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