

# THE EU's MUTUAL DEFENCE CLAUSE: LEGAL AND STRATEGIC CONSIDERATIONS ON ARTICLE 42(7) TEU IN AN AGE OF RENEWED MILITARY THREATS

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*EU institutions have expanded their involvement in defence since 2016, prompted by Brexit and Donald Trump's first presidential victory. This trend has become even more pronounced since the 2022 Russian invasion of Ukraine. NATO remains central to Europe's territorial defence, as evidenced by Finland and Sweden's accession, yet there also exists legal basis for the EU to play a role. Article 42(7) of the Treaty on European Union (TEU) obliges Member States to assist each other in the event of armed aggression, echoing Article 5 of the North Atlantic Treaty (NAT). This provision has received limited attention from legal scholars. With the war in Ukraine intensifying, concerns over Trump undermining Article 5 NAT and rising risks of military and hybrid attacks on Europe, it is crucial to understand how the EU's mutual defence clause would be implemented. This includes its interplay with the EU's solidarity clause in Article 222 of the Treaty on the Functioning of the EU (TFEU) and NATO's own mutual defence clause. To this end, this article undertakes a legal and strategic analysis of Article 42(7) TEU. Following an introduction that outlines the topic and methodology, Section 1 offers a legal perspective, while Section 2 a strategic perspective. Section 3 concludes that, while significant progress has been made, the EU is not yet in a position to credibly threaten the use of force in the exercise of collective defence.*

## INTRODUCTION

In 1991, then-Belgian Minister of Foreign Affairs, Mark Eyskens, described the EU as 'an economic giant, a political dwarf and a military worm'.<sup>1</sup> Today, the EU is no longer a political dwarf or a military worm, though military capability shortfalls remain.

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<sup>1</sup> As quoted by Craig R Whitney, 'War in the Gulf: Europe; Gulf Fighting Shatters Europeans' Fragile Unity', (The New York Times, 25 January 1991) <<https://www.nytimes.com/1991/01/25/world/war-in-the-gulf-europe-gulf-fighting-shatters-europeans-fragile-unity.html>> accessed 20 September 2024.

In 2007, the Lisbon Treaty modified the 1992 Maastricht Treaty (or TEU) – as well as the other founding treaty, the Treaty Establishing the European Community (TEC), which it renamed as TFEU – and transformed the European Security and Defence Policy (ESDP), establishing the Common Security and Defence Policy (CSDP). Outlined in Articles 42–46 of Title V, Section 2, the CSDP has made security and defence an integral part of the Common Foreign and Security Policy (CFSP) intergovernmental framework and allows EU Member States to make security and defence policy decisions on the basis of unanimity.<sup>2</sup>

While reaffirming the Maastricht Treaty's principle that a common defence policy would develop progressively, with a common defence requiring unanimous agreement by the European Council,<sup>3</sup> the Lisbon Treaty introduced a mutual assistance obligation for EU Member States in Article 42(7) TEU. This obligation requires Member States to assist one another in the event of an armed aggression. Consequently, although the failure of the 1952 European Defence Community project means that the EU lacks a common defence – such as NATO's integrated military command structure, shared nuclear doctrine, and other traditional defensive alliance characteristics – the EU Treaty now includes a qualified mutual defence clause.

Despite acknowledging that NATO remains the cornerstone of territorial defence for those countries who are members of both organisations, the 2016 EU Global Strategy and, more recently, the 2022 Strategic Compass, have stressed the need for EU Member States to be prepared to translate mutual assistance commitments into action.<sup>4</sup> The strategic autonomy envisaged in 2016 remains largely a work in progress, as highlighted by the continued need to negotiate and align with the US, exemplified by the EU-US Framework on Reciprocal, Fair, and Balanced Trade announced in August.<sup>5</sup> Yet, the EU has clearly made considerable steps forward, particularly since Russia launched an all-out war against Ukraine on 24 February 2022.<sup>6</sup>

The Union has supplied Ukraine with €11.1 billion in military aid through the European Peace Facility (EPF), an off-budget fund which enabled it to provide lethal weapons for the first time,<sup>7</sup> and launched a training mission for Ukrainian forces on its soil,

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<sup>2</sup> Consolidated version of the Treaty on European Union [2016] OJ C 202/38 (TEU) Article 42(4).

<sup>3</sup> Ibid Article 42(2); Treaty on European Union [1992] OJ C191/59 Article J.4(1).

<sup>4</sup> European External Action Service, 'Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy' (June 2016) (EUGS) 9, 14, 19 and 20

<[https://www.eeas.europa.eu/sites/default/files/eugs\\_review\\_web\\_0.pdf](https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf)> accessed 20 September 2024;

European External Action Service, 'A Strategic Compass for Security and Defence. For a European Union that protects its citizens, values and interests and contributes to international peace and security' (March 2022) 10, 14, 23, 28, 30, 31, 34, 35, 36, 39, 40, 53 and 54,

<[https://www.eeas.europa.eu/sites/default/files/documents/strategic\\_compass\\_en3\\_web.pdf](https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf)> accessed 20 September 2024.

<sup>5</sup> European Commission, 'Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade', Statement, (21 August 2025), available

<[https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21\\_en](https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en)> accessed 23 September 2025.

<sup>6</sup> See, e.g., Federico Fabbrini, 'To "Provide for the Common Defence": Developments in Foreign Affairs and Defence' in Federico Fabbrini (ed), *The EU Constitution in Time of War* (Oxford University Press, 2025) 21–47; Daniel Fiott, 'In every crisis an opportunity? European Union integration in defence and the War on Ukraine' (2023) 45(3) *Journal of European Integration* 447.

<sup>7</sup> Council of the EU, 'European Peace Facility: Timeline – European Peace Facility' (Last review: 4 December 2024) <<https://www.consilium.europa.eu/en/policies/european-peace-facility/>> accessed 7 January 2025; see also Federico Fabbrini, 'Funding the War in Ukraine, the European Peace Facility, the Macro-Financial Assistance Instrument, and the Slow Rise of and EU Fiscal Capacity' (2023) 11(4) *Politics & Governance* 52.

another first.<sup>8</sup> The EU has also introduced initiatives like the European Defence Industry Reinforcement through common Procurement Act (EDIRPA)<sup>9</sup> to address capability gaps, the Act in Support of Ammunition Production (ASAP)<sup>10</sup> to boost artillery shell production, the European Defence Industry Strategy (EDIS),<sup>11</sup> its first defence industrial strategy, supported by the European Defence Industry Programme (EDIP)<sup>12</sup> for long-term readiness, and, more recently, the ReArm Europe Plan/Readiness 2030<sup>13</sup> to facilitate national defence budget increases. Additionally, the Strategic Compass envisions the creation of a Rapid Deployment Capacity (RDC) of 5,000 troops by 2025.<sup>14</sup>

Therefore, the EU has adopted important defence initiatives and, by endangering the credibility of NATO's Article 5 security guarantee, the second Trump administration is likely to accelerate this trend further.

In light of these developments, this article aims to review the EU's mutual assistance clause, enshrined in Article 42(7) TEU, using a law-in-context approach.<sup>15</sup> The article is

<sup>8</sup> Council of the EU, 'Ukraine: EU launches Military Assistance Mission' (Press Release, 15 November 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/11/15/ukraine-eu-launches-military-assistance-mission/>> accessed 20 September 2024.

<sup>9</sup> European Commission, 'Commission Implementing Decision of 15.3.2024 on the Financing of the Instrument for the Reinforcement of the European Defence Industry through Common Procurement (EDIRPA) Established by Regulation (EU) 2023/2418 of the European Parliament and of the Council and the Adoption of the Work Programme for 2024-2025' C(2024) 1700 final <[https://defence-industry-space.ec.europa.eu/document/download/8b38112b-a9e2-499e-bb1e-b8dbfc6dfeb27\\_en?filename=EDIRPA%20Implementing%20Decision%20EN.pdf](https://defence-industry-space.ec.europa.eu/document/download/8b38112b-a9e2-499e-bb1e-b8dbfc6dfeb27_en?filename=EDIRPA%20Implementing%20Decision%20EN.pdf)> accessed 20 September 2024.

<sup>10</sup> European Commission, 'Commission Implementing Decision of 18.10.2023 on the Financing of the Instrument on Supporting Ammunition Production (ASAP) Established by Regulation (EU) 2023/1525 of the European Parliament and of the Council and the Adoption of the Work Programme for 2023-2025' C(2023) 7320 final <[https://defence-industry-space.ec.europa.eu/document/download/5845b34d-bb2f-4381-aca3-ec9ff965f687\\_en?filename=C\\_2023\\_7320\\_1\\_EN\\_ACT\\_and\\_annex.pdf](https://defence-industry-space.ec.europa.eu/document/download/5845b34d-bb2f-4381-aca3-ec9ff965f687_en?filename=C_2023_7320_1_EN_ACT_and_annex.pdf)> accessed 20 September 2024.

<sup>11</sup> European Commission, 'Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A New European Defence Industrial Strategy: Achieving EU Readiness Through a Responsive and Resilient European Defence Industry' JOIN(2024) 10 final (5 March 2024) <[https://defence-industry-space.ec.europa.eu/document/download/643c4a00-0da9-4768-83cd-a5628f5c3063\\_en?filename=EDIS%20Joint%20Communication.pdf](https://defence-industry-space.ec.europa.eu/document/download/643c4a00-0da9-4768-83cd-a5628f5c3063_en?filename=EDIS%20Joint%20Communication.pdf)> accessed 20 September 2024.

<sup>12</sup> European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products ('EDIP') COM(2024) 150 final (5 March 2024) <[https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424\\_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf](https://defence-industry-space.ec.europa.eu/document/download/6cd3b158-d11a-4ac4-8298-91491e5fa424_en?filename=EDIP%20Proposal%20for%20a%20Regulation.pdf)> accessed 20 September 2024.

<sup>13</sup> European Commission, 'Letter by President von der Leyen on defence' (4 March 2025) <<https://ec.europa.eu/commission/presscorner/api/files/attachment/880628/Letter%20by%20President%20von%20der%20Leyen%20on%20defence.pdf>> accessed 20 September 2024; see also European Commission, 'Communication from the Commission Accommodating increased defence expenditure within the Stability and Growth Pact' C(2025) 2000 final (19 March 2025) <[https://defence-industry-space.ec.europa.eu/document/download/a57304ce-1a98-4a2c-aed5-36485884f1a0\\_en?filename=Communication-on-the-national-escape-clause.pdf](https://defence-industry-space.ec.europa.eu/document/download/a57304ce-1a98-4a2c-aed5-36485884f1a0_en?filename=Communication-on-the-national-escape-clause.pdf)> accessed 7 April 2025; European Commission, 'Proposal for a Council Regulation establishing the Security Action for Europe (SAFE) through the reinforcement of European defence industry Instrument' COM(2025) 122 final (19 March 2025) <[https://defence-industry-space.ec.europa.eu/document/download/6d6f889c-e58d-4caa-8f3b-8b93154fe206\\_en?filename=SAFE%20Regulation.pdf](https://defence-industry-space.ec.europa.eu/document/download/6d6f889c-e58d-4caa-8f3b-8b93154fe206_en?filename=SAFE%20Regulation.pdf)> accessed 7 April 2025.

<sup>14</sup> EEAS, 'A Strategic Compass for Security and Defence' (n 4) 6, 11, 25, and 31.

<sup>15</sup> Megan Donaldson, 'Peace, war, law: teaching international law in contexts' (2022) 18(4) *International Journal of Law in Context* 393; Peter Cane, 'Context, context everywhere' (2020) 16(4) *International Journal*

structured as follows. The next Section provides a legal analysis of Article 42(7) TEU and the collective defence responsibilities it entails for EU members, including differences and overlaps with similar obligations under Article 222 TFEU and Article 5 NAT. The legal analysis shows that, similarly to Article 5 NAT, Article 42(7) TEU envisages an *obligation of result, not of means* but no disciplinary measures are contemplated in the event of inaction or inadequate action by one or more Member States. Furthermore, Article 42(7) TEU, like Article 5 NAT, covers both conventional and unconventional attacks – including cyber, hybrid, and space attacks, as well as state-sponsored and non-state sponsored terrorist attacks. This article, however, argues that the defence obligations triggered by the invocation of Article 42(7) TEU are *automatic*, unlike those under Article 5 NAT, *but not*, as some authors have suggested,<sup>16</sup> *unconditional*, due to the presence of both the Irish and NATO clauses.

The article concludes with a strategic analysis supporting a broad interpretation of Article 42(7) TEU, under whose scope both conventional and unconventional forms of aggression fall. To support this view, the article examines the EU's latest security strategies – the 2016 EU Global Strategy (EUGS) and the 2022 Strategic Compass – along with their associated implementation strategies and progress reports. These documents reveal, however, that the EU has consistently prioritised asymmetric threats such as terrorism, cyberattacks, hybrid warfare and space-based risks while giving comparatively limited attention to conventional military threats. The fact that this remains the case despite Russia's full-scale invasion of Ukraine suggests that NATO is likely to continue to serve as the primary framework for traditional collective defence in Europe.

## 2 LEGAL ANALYSIS OF ARTICLE 42(7) TEU

Article 42(7) TEU states:

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

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.<sup>17</sup>

Several elements seem to deserve further examination:

### I. The use of the words 'armed aggression' rather than 'armed attack';

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of Law in Context 459; William Twining, *Law in Context: Enlarging a Discipline* (Oxford University Press, 1997).

<sup>16</sup> Hermann-Josef Blake and Stelio Mangiameli, 'Article 42 [CSDP: Goals and Objectives; Mutual Defence] (ex-Article 17 TEU)' in Hermann-Josef Blake and Stelio Mangiameli (eds), *The Treaty on European Union (TEU): A Commentary* (Berlin: Springer-Verlag Berlin Heidelberg 2013) 1228.

<sup>17</sup> TEU (n 2) Article 42(7).

- II. The fact that the aggression must have taken place on the territory of the aggressed;
- III. The framework of response: bilateral (Member States) vs collective (EU);
- IV. The phrasing ‘obligation of aid and assistance by all the means in their power’;
- V. The express reference to Article 51 of the Charter of the United Nations (UNC);
- VI. The so-called ‘Irish formula’;
- VII. The ‘NATO formula’.

## 1.1 ARMED AGGRESSION VS ARMED ATTACK

An armed attack is a form of armed aggression, which means that armed aggression is a broader category, comprising other forms of aggression beyond armed attacks.<sup>18</sup> Although the two terms are often used interchangeably, some authors<sup>19</sup> have argued that since Article 42(7) TEU refers to armed aggression while Article 5 NAT to armed attack, the former could potentially cover a broader spectrum of threats than the latter.<sup>20</sup> For example, it could be activated for those hybrid acts that do not meet the threshold of armed attack under Article 5 NAT,<sup>21</sup> such as recent incidents in the Baltic Sea.<sup>22</sup> Therefore, at least in theory, EU Member States would be legally bound to collective defence in cases when NATO Allies are not. This argument seems implausible for two reasons.

First, it is not only Article 5 NAT that preferred the coinage armed attack to armed aggression but also Article 51 UNC, which both Article 5 NAT and 42(7) TEU make express

<sup>18</sup> See e.g. Federica Fazio, ‘Collective defence in NATO: A legal and strategic analysis of Article 5 in light of the war in Ukraine’ (5 November 2024) DELI Working Paper Series 2/24, Dublin European Law Institute, 6 <<https://zenodo.org/records/14037328>> accessed 18 November 2025.

<sup>19</sup> Anne Bakker et al, ‘The EU’s Mutual Assistance Clause: Spearheading European Defence: Employing the Lisbon Treaty for a Stronger CSDP’ (2016) Report, Clingendael, 25 <<https://www.jstor.org/stable/resrep05543.8?seq=1>> accessed 16 October 2024.

<sup>20</sup> See e.g. Jean-Christophe Martin, ‘La Clause de Défense Mutuelle’ in Elsa Bernard, Quentin Loiez and Stéphane Rodrigues (eds), *L’Union européenne de la défense : commentaire article par article* (Bruylant 2024) 408.

<sup>21</sup> As Perot pointed out, ‘when it comes to how to react to the most serious forms of hybrid threats, the general idea that emerged [...] was that of a division of labor between the EU and NATO, whereby the EU would be responsible for responding first through Article 222 TFEU and then Article 42.7 TEU, while NATO would be called upon to intervene in the event of further escalation, on the basis of its own collective defense clause’. See Elie Perot, ‘The European Union’s nascent role in the field of collective defense: between deliberate and emergent strategy’ (2024) 46(1) *Journal of European Integration*, 11; see also Aurel Sari, ‘The Mutual Assistance Clauses of the North Atlantic and EU Treaties: The Challenge of Hybrid Threats’ (2019) 10 *Harvard National Security Journal* 405, 452 and 455. Additionally, Sari has argued that, by covering terrorist attacks and man-made disasters, Article 222 TFEU gives EU Member States legal basis to assist one another in responding to acts of sabotage that fall below the threshold of an armed attack or armed aggression and, therefore, do not trigger Article 5 NAT or Article 42(7) TEU; *Ibid* 458 and 459.

<sup>22</sup> For an overview of recent incidents in the Baltic Sea, see Reuters, ‘Recent suspected underwater sabotage incidents in the Baltic Sea’, (21 February 2025), available <<https://www.reuters.com/world/europe/recent-suspected-underwater-sabotage-incidents-baltic-sea-2024-12-03/>> accessed 15 March 2025; German Federal Foreign Office, ‘Joint Declaration by the Foreign Ministers of Germany, France, Poland, Italy, Spain and the United Kingdom in Warsaw’ (Press Release, 19 November 2024) <<https://www.auswaertiges-amt.de/en/newsroom/news/2685538-2685538>> accessed 7 December 2025; European Commission, ‘Joint Statement by the European Commission and the High Representative on the Investigation into Damaged Electricity and Data Cables in the Baltic Sea’ (Statement, 26 December 2024) <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_24\\_6582](https://ec.europa.eu/commission/presscorner/detail/en/statement_24_6582)> accessed 7 January 2025; Statsministeriet, ‘Joint Statement of the Baltic Sea NATO Allies’, (14 January 2025), available <<https://stm.dk/media/ndolltur/joint-statement-of-the-baltic-sea-nato-allies-summit.pdf>> accessed 7 January 2025.



reference to.<sup>23</sup> As pointed out by Reichard, Article 103 UNC gives it legal primacy over other international treaties.<sup>24</sup> Article 30(1) of the Vienna Convention on the Law of Treaties (VCLT) reflects the effects of this supremacy.<sup>25</sup> In light of this, and pursuant to the duty of consistent interpretation of EU law with international law – which stems from Articles 3(5) and 21(1) TEU and has been recognised by the Court of Justice of the EU (CJEU) in cases such as *Poulsen* (C-286/90)<sup>26</sup> and *Air Transport Association of America* (C-366/10)<sup>27</sup> – it follows that Article 42(7) TEU should, insofar as possible, be interpreted in conformity with Article 51 UNC. Accordingly, the term ‘armed aggression’ in Article 42(7) TEU should be understood as synonymous with ‘armed attack’ under Article 51 UNC.<sup>28</sup>

In the absence of any reference to the motives behind the change in wording from armed attack into armed aggression in the documents that were issued by the European Convention and formalised by the Intergovernmental Conference of the Representatives of the Governments of the Member States between December 2002 and April 2003, it is safe to assume, as some commentators have, that ‘the reference to “armed aggression” may simply be the result of a literal translation of the French “agression armée”’.<sup>29</sup>

Second, in 2016, NATO Allies recognised cyberspace as a domain of warfare, alongside land, sea, air and, more recently, space, and countering hybrid threats has been an area of strengthened EU-NATO cooperation ever since.<sup>30</sup> Additionally, ‘[h]ybrid attacks have been explicitly identified by both the EU Strategic Compass and the NATO Strategic Concept as qualifying for collective response’.<sup>31</sup> Furthermore, earlier this year, NATO announced the launch of Baltic Sentry to bolster its military presence in the Baltic Sea and

<sup>23</sup> Fazio, ‘Collective defence in NATO’ (n 18) 5.

<sup>24</sup> Martin Reichard, ‘Collective Self-Defence’ in Martin Reichard (ed), *The EU-NATO Relationship: A Legal and Political Perspective* (Routledge 2006) 210.

<sup>25</sup> See, e.g. Alexander Orakhelashvili, ‘1969 Vienna Convention. Article 30: Application of Successive Treaties Relating to the Same Subject Matter’ in Olivier Corten and Pierre Klein (eds), *The Vienna Convention on the Law of Treaties A Commentary* (Oxford University Press, 2011) 764 and 780.

<sup>26</sup> Case C-286/90 *Poulsen and Diva Navigation* EU:C:1992:453 paras 9 and 10.

<sup>27</sup> Case C-366/10 *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* EU:C:2011:864 paras 101, 103, and 109.

<sup>28</sup> Blake and Mangiameli (n 16) 122; Martin (n 20) 408-409.

<sup>29</sup> Bob Deen, Dick Zandee, and Adája Stoetman, ‘Uncharted and uncomfortable in European defence: The EU’s mutual assistance clause of Article 42(7)’ (January 2022) Report, Clingendael, 7 <<https://www.clingendael.org/sites/default/files/2022-01/uncharted-and-uncomfortable.pdf>> accessed 20 September 2024; see also Jolyon Howorth, ‘The European Draft Constitutional Treaty and the Future of the European Defence Initiative: A Question of Flexibility’ (2004) 9(4) *European Affairs Review* 483; Elie Perot ‘The art of commitments: NATO, the EU, and the interplay between law and politics within Europe’s collective defence architecture’ (2019) 28(1) *European Security* 40, 45; Martin (n 20) 408; Sari (n 21) 418.

<sup>30</sup> European Parliament, ‘Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization’ (8 July 2016) <[https://www.europarl.europa.eu/cmsdata/121580/20160708\\_160708-joint-NATO-EU-declaration.pdf](https://www.europarl.europa.eu/cmsdata/121580/20160708_160708-joint-NATO-EU-declaration.pdf)> accessed 20 September 2024.

<sup>31</sup> Bernard Siman, ‘Hybrid Warfare: Attribution is Key to Deterrence’ (Egmont Institute, 30 January 2023) <<https://www.egmontinstitute.be/hybrid-warfare-attribution-is-key-to-deterrence/>> accessed 10 October 2024. Already in 2016, the Joint Framework on countering hybrid threats stated that ‘if multiple serious hybrid threats constitute armed aggression against an EU Member State, Article 42 (7) TEU could be invoked to provide an appropriate and timely response. A wide-ranging and serious manifestation of hybrid threats may also require increased cooperation and coordination with NATO’. See European Commission, ‘Joint Communication to the European Parliament and the Council-Joint Framework on countering hybrid threats’ JOIN(2016) 18 final (6 April 2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016JC0018>> accessed 10 October 2024.

deter further sabotage of critical undersea infrastructure by state and non-state actors alike.<sup>32</sup> Therefore, it seems unreasonable to believe that an act of hybrid warfare would trigger Article 42(7) TEU but not Article 5 NAT.

Article 42(7) traces back to Article 4 of the Brussels Treaty (BT), which, like Article 5 NAT, was originally designed for collective defence against conventional military attacks, not attacks by non-state actors. The article's activation in response to a non-state-sponsored terrorist attack, despite the existence of Article 222 TFEU (which is specifically designed to address such incidents), seems to support the argument of an extensive interpretation of this norm.<sup>33</sup>

Furthermore, like NATO, the EU recognised cyberspace and space as operational domains in 2018<sup>34</sup> and has since put forward a new Cybersecurity Strategy in 2020,<sup>35</sup> a Military Vision and Strategy on Cyberspace as a Domain of Operations in 2021,<sup>36</sup> the first-ever Space Strategy for Security and Defence in 2023,<sup>37</sup> and the Space Act in 2025.<sup>38</sup> As the strategic analysis section will show, there is a strong focus in the Compass on regular exercises to further strengthen mutual assistance in case of armed aggression, particularly in the cyber,<sup>39</sup> hybrid,<sup>40</sup> and space domains.<sup>41</sup> Therefore, it seems safe to assume that, although the interpretation of Article 42(7) TEU has never been discussed or expanded in European Council decisions or conclusions, unlike that of Article 5 NAT in NATO Summit communiqués, Article 42(7) should be considered applicable under the same circumstances as Article 5. Non-traditional attacks, such as terrorist attacks, cyberattacks, hybrid attacks and attacks to, from and within space, are therefore also covered by the EU's Article 42(7), with potential overlaps between the two clauses.<sup>42</sup>

<sup>32</sup> NATO, 'Joint Press Conference by NATO Secretary General Mark Rutte with the President of Finland Alexander Stubb and the Prime Minister of Estonia Kristen Michal at the Baltic Sea NATO Allies Summit' (14 January 2025) <[https://www.nato.int/cps/en/natohq/opinions\\_232116.htm](https://www.nato.int/cps/en/natohq/opinions_232116.htm)> accessed 20 September 2025; SHAPE, 'Baltic Sentry to Enhance NATO's Presence in the Baltic Sea' (14 January 2025) <<https://shape.nato.int/news-releases/baltic-sentry-to-enhance-natos-presence-in-the-baltic-sea>> accessed 10 February 2025.

<sup>33</sup> Blake and Mangiameli (n 16) 1225-1226; Martin (n 20) 410-411. See also Section 1.3.

<sup>34</sup> Council of the EU, 'EU Cyber Defence Policy Framework' (2018 update) 14413/18 (19 November 2018) <<https://data.consilium.europa.eu/doc/document/ST-14413-2018-INIT/en/pdf>> accessed 6 November 2025.

<sup>35</sup> European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament and the Council - The EU's Cybersecurity Strategy for the Digital Decade' JOIN(2020) 18 final <<https://digital-strategy.ec.europa.eu/en/library/eus-cybersecurity-strategy-digital-decade-0>> accessed 10 October 2025.

<sup>36</sup> European External Action Service, 'European Union Military Vision and Strategy on Cyberspace as a Domain of Operations' EEAS(2021) 706 REV4 <<https://www.statewatch.org/media/2879/eu-eeas-military-vision-cyberspace-2021-706-rev4.pdf>> accessed 10 October 2025.

<sup>37</sup> European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament and the Council- European Union Space Strategy For Security and Defence' JOIN(2023) 9 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0009>> accessed 20 September 2024.

<sup>38</sup> European Commission, Defence Industry and Space, 'EU Space Act: Strengthening Safety, Resilience and Sustainability in Space' (25 June 2025) <[https://defence-industry-space.ec.europa.eu/eu-space-act\\_en](https://defence-industry-space.ec.europa.eu/eu-space-act_en)> accessed 28 June 2025.

<sup>39</sup> EEAS, 'A Strategic Compass for Security and Defence' (n 4) 31, 35, and 39.

<sup>40</sup> Ibid 31 and 39.

<sup>41</sup> Ibid 34 and 36.

<sup>42</sup> Already in 2012, the European Parliament stated in its resolution on the EU's mutual defence and solidarity clauses: political and operational dimensions that '[...] even non-armed attacks, for instance cyberattacks against critical infrastructure, that are launched with the aim of causing severe damage and disruption to a

## 1.2 ARMED AGGRESSION ON A MEMBER STATE'S TERRITORY

While Article 5 NAT states that the armed attack against one or more NATO Allies must have been committed in 'Europe or North America', with Article 6 further clarifying the geographical reach of the attack that can trigger the mutual defence obligation, Article 42(7) TEU simply states that a member state must be 'victim of armed aggression on its territory'. This leads to two considerations:

First, only the aggressed Member State(s) can invoke Article 42(7) TEU. It was France, the victim of the terrorist attacks, that invoked Article 42(7) in 2015. In contrast, in the case of Article 5 NAT, it was not the US, the victim of the terrorist attack, but its Allies who offered to invoke it.<sup>43</sup>

Second, in light of the fact that no further clarification is provided in terms of geographical coverage, overseas territories outside of Europe should be intended as included in the scope of Article 42(7). For example, should an attack occur on the land, in the waters or in the airspace of the French territory of *La Martinique*, in the Caribbean, France could potentially invoke Article 42(7) as it did after the Paris attacks. It could not invoke NATO's Article 5 though, since the island is located below the Tropic of Cancer.<sup>44</sup>

However, it has been argued that since EU primary law does not apply to all overseas territories, neither should Article 42(7) TEU.<sup>45</sup> In fact, some scholars and practitioners<sup>46</sup> have analysed the distinction between the EU's outermost regions (ORs), which include for example *La Martinique*, and the EU's overseas countries and territories (OCTs).

The former are part of EU territory, subject to EU law, and enjoy all the rights and obligations of EU membership, though certain specific measures apply.<sup>47</sup> In contrast, the latter are associated with the EU but not considered part of it.<sup>48</sup> While EU law does not extend to them, their foreign, security and defence policy often falls under the jurisdiction of

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Member State and are identified as coming from an external entity could qualify for being covered by the clause'. See European Parliament, 'European Parliament resolution of 22 November 2012 on the EU's mutual defence and solidarity clauses: political and operational dimension (2012/2223(INI))' P7 TA(2012)0456 para 13 <[https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-7-2012-0456_EN.pdf)> accessed 5 September 2024. As observed by Martin, following the Bataclan and Stade de France attacks, however, the EEAS further clarified that, to fall within the scope of Article 42(7) TEU and constitute armed aggression, 'The attack must originate from abroad and its scope covers attacks by state and non-state actors [translated from French]', as quoted in Martin (n 20) 410-411; see also Sari (n 21) 422.

<sup>43</sup> Fazio, 'Collective defence in NATO' (n 188) 6.

<sup>44</sup> Pol Navarro I Serradell, A Comparative Study of Article 5 of the NATO and Article 42(7) of the Treaty on the European Union: Its Scope and Limits (Finabel 2024) 12.

<sup>45</sup> Blake and Mangiameli (n 16) 1226; see also Carmen-Cristina Cirlig, 'The EU's mutual assistance clause. First ever activation of Article 42(7) TEU' (Briefing, European Parliamentary Research Service, 27 November 2015), 3 <[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2015\)572799](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2015)572799)> accessed 10 November 2024.

<sup>46</sup> See, e.g., Perot, 'The art of commitments' (n 29) 49; Deen et al (n 29) 17; Wessel Willem Geursen, Mapping the territorial scope of EU law (PhD thesis, Vrije Universiteit Amsterdam 2024) <<https://research.vu.nl/ws/portalfiles/portal/307385687/wv%20geursenmapping%20the%20territorial%20scope%20of%20eu%20lawthesis%20including%20annexes%20-%2065e4818190907.pdf>> accessed 18 February 2025.

<sup>47</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/195, 197, Articles 349 and 355. ORs are currently 9 in total. For the full list see <[https://ec.europa.eu/regional\\_policy/policy/themes/outermost-regions\\_en](https://ec.europa.eu/regional_policy/policy/themes/outermost-regions_en)> accessed 20 September 2024.

<sup>48</sup> Although some researchers believe otherwise; see, e.g., Geursen (n 46) 148; TFEU Articles 198-204. OCTs are currently 13. The full list can be found at <[https://international-partnerships.ec.europa.eu/countries/overseas-countries-and-territories\\_en](https://international-partnerships.ec.europa.eu/countries/overseas-countries-and-territories_en)> accessed 20 September 2024.



the EU Member States they maintain special ties with. As EU law applies to ORs but not OCTs, it follows that Article 42(7) TEU could be invoked for ORs but not for OCTs.<sup>49</sup> This classification has gained renewed attention following US President Donald Trump's refusal to rule out the use of military force to acquire Greenland, an OCT.<sup>50</sup>

However, the status of ORs and OCTs can be easily changed by the European Council without requiring any amendment to the TFEU. The French territory of Mayotte, for example, was originally an OCT until 2014 when it became an OR at the request of France.<sup>51</sup> Were it to come under attack, France could, therefore, invoke Article 42(7). This also applies to the Spanish cities of Ceuta and Melilla in Morocco,<sup>52</sup> which, although located above the Tropic of Cancer, are not covered by Article 5 NAT.<sup>53</sup>

As Sari has pointed out, unlike Article 5 NAT, Article 42(7) cannot be invoked if the armed forces of a Member State are attacked while deployed in the territory of another Member State.<sup>54</sup> The clause's sole reference to Member State territories also appears to exclude its applicability to ships in international waters or military personnel deployed out of area. This means that, if vessels flying an EU Member State's flag are attacked in international waters, or if soldiers participating in a CSDP mission or other external operation come under attack, Article 42(7) TEU does not apply.<sup>55</sup> As such, the French proposal earlier this year to send European troops – outside of NATO and without US support – to help secure a potential ceasefire between Russia and Ukraine would have left them vulnerable to aggression. This consideration is likely among the factors that prompted the President of the European Commission, Ursula von der Leyen, to negotiate with President Trump a multinational troop deployment with US backing as part of post-conflict security guarantees to Ukraine.<sup>56</sup>

The same logic seems to extend to outer space. As pointed out by Fiott,<sup>57</sup> it is not clear whether Article 42(7) TEU applies to space-based assets and personnel. Under international

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<sup>49</sup> Although Perot suggests that the fact that OCTs are not part of the EU does not preclude an armed aggression there from triggering the obligation of aid and assistance among EU Member States under Article 42(7) TEU, while Geursen argues that CFSP legislation should apply uniformly to all overseas territories, and that allowing a division in its application would undermine its coherence. See Perot, 'The art of commitments' (n 29) 49; Geursen (n 46) 148.

<sup>50</sup> See, e.g., Federica Fazio, 'What happens if Trump invades Greenland?' (DCU Brexit Institute, 13 January 2025) <<https://dcubrexitinstitute.eu/2025/01/what-happens-if-trump-invades-greenland/>> accessed 14 January 2025.

<sup>51</sup> Frédéric Gouardères, 'Outermost regions (ORs)' (Fact Sheet on the European Union, European Parliament, March 2024) <<https://www.europarl.europa.eu/factsheets/en/sheet/100/outermost-regions-ors>> accessed 20 September 2024.

<sup>52</sup> For more information on EU territories, see <[https://taxation-customs.ec.europa.eu/territorial-status-eu-countries-and-certain-territories\\_en](https://taxation-customs.ec.europa.eu/territorial-status-eu-countries-and-certain-territories_en)> accessed 20 September 2025.

<sup>53</sup> Serradell (n 44) 12.

<sup>54</sup> Sari (n 21) 455.

<sup>55</sup> Perot, 'The art of commitments' (n 29) 50; Deen et al (n 29) 18.

<sup>56</sup> Henry Foy, 'Europe has 'pretty precise' plan to send troops to Ukraine, von der Leyen says', (Financial Times, 31 August 2025), available <<https://www.ft.com/content/8ade14ca-7aa1-4413-887b-59712037665c>> accessed 6 September 2025; see also Delegation of the European Union to Ukraine, 'Statement by President von der Leyen following the meeting of the Coalition of the Willing in Paris', Paris, (5 September 2025), available <[https://www.eeas.europa.eu/delegations/ukraine/statement-president-von-der-leyen-following-meeting-coalition-willing-paris\\_en](https://www.eeas.europa.eu/delegations/ukraine/statement-president-von-der-leyen-following-meeting-coalition-willing-paris_en)> accessed 6 September 2025.

<sup>57</sup> Daniel Fiott, 'The Strategic Compass and EU space-based defence capabilities' (In-Depth Analysis Requested by the SEDE Sub-Committee, European Parliament, November 2022), 26-27 <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702569/EXPO\\_IDA\(2022\)702569\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702569/EXPO_IDA(2022)702569_EN.pdf)> accessed 30 September 2024.

law, sovereignty cannot be asserted in space. The 1967 Outer Space Treaty – to which all EU Member States are now parties<sup>58</sup> – affirms that '[o]uter space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'.<sup>59</sup> Therefore, Article 42(7) TEU could apply in the event of an attack originating from space and targeting the territory of a Member State, but not, for example, to attacks on EU astronauts aboard the International Space Station or on satellite systems such as Copernicus or Galileo, unless the attack coincides with their orbiting directly above a Member State's territory. Nevertheless, the 2023 EU Space Strategy for Security and Defence, clearly states that '[a]ny Member State can invoke the mutual assistance clause enshrined in the EU Treaties (Article 42(7) of the Treaty on European Union), *should a space threat or incident amount to an armed attack on its territory*'.<sup>60</sup> This was followed by amendments to Council Decision (CFSP) 2021/698,<sup>61</sup> to extend its scope to threats in the space domain that may affect the security of the EU and its Member States, and particularly those to the systems and services set up under the Union Secure Connectivity Programme. More recently, the European Commission proposed the EU Space Act, aimed at strengthening protection of European space infrastructure by extending cybersecurity regulations to the space sector.<sup>62</sup> These developments suggest a broader interpretation of Article 42(7) TEU, potentially encompassing attacks from, to, or even within space, provided they are considered an armed attack on a Member State's territory.<sup>63</sup>

### 1.3 FRAMEWORK OF RESPONSE: BILATERAL (MEMBER STATES) VS COLLECTIVE (EU) RESPONSE

While Article 42(7) TEU commits only the Member States to come to each other's assistance in case of armed aggression, another norm, Article 222 TFEU, requires both the Member States and the EU institutions to provide support in the event of terrorist attacks as well as man-made or natural disasters.<sup>64</sup>

The solidarity clause was first introduced into the EU legal framework during the negotiations leading to the signing of the Constitutional Treaty (CT), as was the mutual defence clause. In the final version of the CT signed on 29 October 2004, the solidarity clause and its implementation mechanism were indicated in Article I-43 and Article III-329,

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<sup>58</sup> Croatia acceded in March 2023 while Latvia in March 2025. For more information see <<https://hina.hr/news/11151003>> and <<https://www2.mfa.gov.lv/en/vienna/news/72300-latvia-officially-joins-the-outer-space-treaty>> accessed 20 April 2025.

<sup>59</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies (27 January 1967), 610 UNTS 205, Article 2.

<sup>60</sup> Joint Communication to the European Parliament and the Council- European Union Space Strategy For Security and Defence (n 37) 9, emphasis added.

<sup>61</sup> See Council of the EU, 'Council Decision (CFSP) 2023/598 of 14 March 2023 amending Decision (CFSP) 2021/698 to include the Union Secure Connectivity Programme' [2023] OJ L79/165.

<sup>62</sup> European Commission, 'Commission proposes EU Space Act to boost market access and strengthen space safety' (Press Release, 25 June 2025) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_1583](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1583)> accessed 18 July 2025.

<sup>63</sup> See Martin (n 20) 407-408.

<sup>64</sup> TFEU n (47) Article 222

respectively.<sup>65</sup> Then, when the CT project failed, the solidarity clause made its way first into the Lisbon Treaty (LT) as Article 188 R, which merged Article I-43 and Article III-329,<sup>66</sup> and eventually into the TFEU as Article 222. Declaration 37 on Article 222 TFEU reiterated what stated in Declaration 9 on Article I-43 and III-329, which is that this legal provision was not ‘intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation’.<sup>67</sup> This suggests that, akin to the mutual defence clause, the solidarity clause may be understood as an *obligation of result rather than means*, notwithstanding the fact that, unlike the former, it makes express reference to military assistance.<sup>68</sup> Although neither Article 42(7) TEU nor Article 222(1) (b) TFEU expressly defines the specific outcome toward which the assistance must be directed – whereas Article 5 NAT explicitly frames collective action in terms of ‘restoring and maintaining the security of the North Atlantic area’ – their underlying purpose may nonetheless be inferred. In particular, Article 3(1) TEU affirms that ‘[t]he Union's aim is to promote peace, its values and the well-being of its peoples’, which, as Govaere has emphasised, constitutes ‘the first (and foremost) express objective of the EU’.<sup>69</sup> Read together, these provisions arguably support the view that the commitments under Article 42(7) TEU and 222 TFEU entail ‘internal’ obligations of result.<sup>70</sup>

Given that the intent of the legislator was for the solidarity clause to cover terrorist attacks by non-state actors,<sup>71</sup> France should have invoked Article 222 TFEU, the solidarity clause, rather than Article 42(7) TEU, the mutual assistance clause, after the attacks by the Islamic State or Iraq and Syria (ISIS) that killed 131 people and injured 416 in Paris on 13 November 2015. However, the French government chose to invoke Article 42(7) TEU for three reasons: (1) Article 42(7) TEU involves only Member States, with no formal role for the EU as such; (2) invoking it does not require a unanimous decision by the Council; and (3) there is no formal procedure to be followed to activate it.

Article 222 TFEU, on the other hand, explicitly refers to the role the EU would play if invoked, which is to mobilise all available instruments, including the military resources provided by the Member States.<sup>72</sup> Additionally, paragraph 3 states that where its decisions have defence implications, the Council needs to act in accordance with Article 31(1) TEU, which requires decisions to be taken by unanimity, save for the possibility of constructive abstention.

<sup>65</sup> ‘Treaty establishing a Constitution for Europe’ (2024) CIG 87/2/04 REV 2, Article I-43 and Article III-329 <<https://data.consilium.europa.eu/doc/document/CG%2087%202004%20REV%202/EN/pdf>> accessed 20 September 2024.

<sup>66</sup> ‘Treaty of Lisbon’ [2007] OJ C 306/1, Article 188 R.

<sup>67</sup> Declaration 37 on Article 222 (n 47).

<sup>68</sup> As pointed out by Cirlig, however, ‘the Council Decision [2014/415/EU] does not represent a legal framework for action if military means are used for defence purposes’ since it specifically states that it has no defence implications; see Cirlig (n 45) 7. For more information on Council Decision 2014/415/EU see n 73.

<sup>69</sup> Inge Govaere, ‘Transformative Impact on the European Union of War (in Ukraine): Existential Conundrums’, in Inge Govaere, Sacha Garben and Eleanor Spaventa (eds.) *The Impact of War (in Ukraine) on the EU*. (Oxford and Dublin: Hart Publishing, 2025) 13.

<sup>70</sup> TEU (n 2) Article 3(1); Inge Govaere, ‘Promoting the Rule of Law in EU External Relations: A Conceptual Framework’, 03(22) *Research Paper in Law*, Department of European Legal Studies, College of Europe (2022) 4.

<sup>71</sup> Deen et al (n 29) 10-11; Tom Dyson and Theodore Konstadinides ‘The Legal Underpinnings of European Defense Cooperation’ in Tom Dyson and Theodore Konstadinides (eds), *European Defense Cooperation in EU Law and IR Theory* (Palgrave Macmillan, 2013) 69.

<sup>72</sup> Deen et al (n 29) 10-11.

The exact procedure for the implementation of Article 222 TFEU by the Union is set out in the Council Decision of 24 June 2014. The Decision not only further clarifies what is meant by terrorist attack,<sup>73</sup> but also poses a condition on the invocation of the clause: ‘the affected Member State may invoke the solidarity 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*’.<sup>74</sup>

By contrast, no formal procedure is foreseen for the implementation of Article 42(7) TEU, making this norm more flexible. When former French Minister of Defence, Jean-Yves Le Drian, formally invoked Article 42(7) TEU at a meeting of the EU Foreign Affairs Council (FAC) on 17 November 2015, the Ministers of Defence of the then-28 Member States expressed their ‘unanimous and full support to France and their readiness to provide all the necessary aid and assistance’.<sup>75</sup> However, the FAC meeting had already been scheduled,<sup>76</sup> and simply provided the opportunity for Le Drian to invoke the clause while his counterparts were already assembled. The clause’s invocation in a Council’s meeting was, therefore, ‘purely incidental’.<sup>77</sup> Yet, the meeting could also be interpreted as an implementation of Article 32 TEU, which in a similar vein to Article 4 NAT, states that ‘Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest, in order to determine a common approach’.<sup>78</sup>

Former High Representative for Foreign Affairs and Security Policy, Federica Mogherini, clarified that this assistance would consist in ‘offers of support through material assistance as well as through enhanced support in other theatres [of operations where France was engaged], and that ‘the article of the Treaty does not require any formal decision or

<sup>73</sup> 2014/415/EU: Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause Article 3 [2014] OJ L192/55. The Council Framework Decision 2002/475/JHA is no longer in force as it was replaced by Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism. For the full list of acts that constitute terrorist offences, see Title II, Directive (EU) 2017/541 Article 3 [2017] OJ L 88/6 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. Council Decision 2014/415/EU Article 3 also defines a member state’s territory for these purposes to include not only its ‘land area, internal waters, territorial sea, and airspace’, but also ‘infrastructure (such as off-shore oil and gas installations)’, located in its territorial sea, exclusive economic zone, or continental shelf.

<sup>74</sup> Ibid Article 4, emphasis added.

<sup>75</sup> Council of the EU, ‘Outcome of the Council Meeting, 3426<sup>th</sup> Council meeting, Foreign Affairs, 14120/15’ (Presse 69, PR CO 61, 16 and 17 November 2015), 6, <<https://www.consilium.europa.eu/media/23101/st14120en15.pdf>> accessed 6 September 2024.

<sup>76</sup> European Commission, ‘LIVE Foreign Affairs Council (Defence) – press conference HRVP Federica Mogherini’ (17 November 2015), at 9:10 <<https://audiovisual.ec.europa.eu/en/video/I-112324>> accessed 10 October 2024.

<sup>77</sup> Christophe Hillion and Steven Blockmans, ‘Europe’s self-defence: Tous pour un et un pour tous?’ (CEPS Commentary, Centre for European Policy Studies, 20 November 2015), 3 <[https://cdn.ceps.eu/wp-content/uploads/2015/11/CH%20&%20SB%20Tous%20pour%20un%20CEPS%20Commentary\\_0.pdf](https://cdn.ceps.eu/wp-content/uploads/2015/11/CH%20&%20SB%20Tous%20pour%20un%20CEPS%20Commentary_0.pdf)> accessed 10 October 2025; see also Cirlig (n 45) 5.

<sup>78</sup> TEU (n 2) Article 32. See e.g. Martin (n 20) 417. As a matter of fact, in 2012 the European Parliament had expressed the view that ‘[...] the obligation to provide aid and assistance, expressing political solidarity among Member States, should ensure a rapid decision in Council in support of the Member State under attack; considers that consultations in line with the requirement of Article 32 TEU would serve this purpose, without prejudice to the right of each Member State to provide for its self-defence in the meantime’. See European Parliament resolution of 22 November 2012 on the EU’s mutual defence and solidarity clauses (n 42) para 17; see also Sari (n 21) 436.

Council conclusion to be taken’.<sup>79</sup> No decision was in fact adopted by the Council. The obligations imposed by Article 42(7) TEU, therefore, unlike those under Article 222 TFEU and Article 5 NAT, are in theory *automatic*, despite the shift in verb tense from ‘will’ in Article 5 BT to ‘shall’ in Article 42.7 LT.<sup>80</sup> Mogherini also clarified that ‘this doesn’t imply EU CSDP mission or operation’.<sup>81</sup>

At a joint press conference with Mr Le Drian on 17 November, Ms Mogherini added that, although the process would be *Member State-driven* and the aid and assistance provided bilaterally, ‘the European Union c[ould] facilitate this and coordinate this’ if useful and necessary.<sup>82</sup> Therefore, although the article does not formally envision a role for EU institutions, the attacked Member State can still request the EU’s support, for instance when it comes to coordinating the overall aid and assistance, as France did.<sup>83</sup>

Following the activation of the mutual assistance clause, bilateral negotiations took place between Member States and the French government regarding the type of aid to be provided. Le Drian specifically requested that the assistance take the form of support for France in external theatres of operations, particularly in Mali, the Sahel, Iraq and Syria.<sup>84</sup> As Mogherini had anticipated, the assistance differed based on the foreign and defence policies of each Member State.<sup>85</sup> For instance, Ireland increased its personnel assigned to the EU Training Mission in Mali, which had been established in 2013 to support French operations against militant Islamist groups in Mali and the Sahel region through Operations

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<sup>79</sup> Press Conference HRVP Federica Mogherini (n 76) at 3:24, and 4:01.

<sup>80</sup> Cirlig (n 45) 3.

<sup>81</sup> Press Conference HRVP Federica Mogherini (n 76) at 4:15. As highlighted by Cirlig, ‘in principle, the EU cannot conduct self-defence operations within the framework of the CSDP (only its Member States), unless the Treaty is amended or the European Council decides unanimously on the establishment of common defence in accordance with Article 42(2) TEU’. See Cirlig (n 45) 4.

<sup>82</sup> Press Conference HRVP Federica Mogherini (n 76) at 4:25.

<sup>83</sup> Already in 2012, in its resolution on the ‘EU mutual defence and solidarity clauses: political and operational dimensions’, the European Parliament had invited the HR/VP ‘to propose practical arrangements and guidelines for ensuring an effective response in the event that a Member State invokes the mutual defence clause, as well as an analysis of the role of the EU institutions should that clause be invoked’. European Parliament resolution of 22 November 2012 on the EU’s mutual defence and solidarity clauses (n 42) para 17. Although these calls were reiterated in 2016, no procedural framework appears to have been established at the time of writing. An ‘operational protocol’ was adopted a few months later, but it addressed only the eventuality of hybrid attacks and referred exclusively to Article 222 TFEU, not Article 42(7) TEU, even though the subsequent implementation report expressly mentions both articles. Additionally, in 2012, the European Parliament had also expressed the view that ‘[...] where collective action is taken to defend a Member State under attack, it should be possible to make use of existing EU crisis management structures where appropriate, and in particular that the possibility of activating an EU Operational Headquarters should be envisaged; stresses that a fully-fledged permanent EU Operational Headquarters is needed [...]’. See European Parliament, ‘Resolution on the mutual defence clause (Article 42(7) TEU) (2015/3034(RSP))’ P8\_TA(2016)0019 paras 17-18 <[https://www.europarl.europa.eu/doceo/document/TA-8-2016-0019\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0019_EN.pdf)> accessed 14 October 2024; see also Council of the EU, ‘Joint Staff Working Document EU operational protocol for countering hybrid threats “EU Playbook”’ 11034/16 (7 July 2016) <<https://www.statewatch.org/media/documents/news/2016/jul/eu-com-countering-hybrid-threats-playbook-swd-227-16.pdf>> accessed 14 October 2024; European Commission, ‘Joint Report to the European Parliament, the European Council and the Council on the implementation of the Joint Framework on countering hybrid threats from July 2017 to June 2018’ JOIN(2018) 14 final <[https://www.ecas.europa.eu/sites/default/files/joint\\_report\\_on\\_the\\_implementation\\_of\\_the\\_joint\\_framework\\_on\\_countering\\_hybrid\\_threats\\_from\\_july\\_2017\\_to\\_june\\_2018.pdf](https://www.ecas.europa.eu/sites/default/files/joint_report_on_the_implementation_of_the_joint_framework_on_countering_hybrid_threats_from_july_2017_to_june_2018.pdf)> accessed 14 October 2024; see also Cirlig (n 45) 9; Martin (n 20) 421; Perot, ‘The European Union’s nascent role in the field of collective defense’ (n 21) 7.

<sup>84</sup> Press Conference HRVP Federica Mogherini (n 76) at 08:32.

<sup>85</sup> Ibid at 4:55.



Serval and Barkhane.<sup>86</sup> The next section will show that the aid provided can, in fact, include both civil and military assistance, as the clause imposes *an obligation of result but not means*.

#### 1.4 OBLIGATION OF AID AND ASSISTANCE BY ALL THE MEANS IN THEIR POWER

As pointed out by Mills, Article 42(7) TEU is a compromise norm between ‘those seeking a mutual defence commitment [...], those seeking to protect their traditional neutral status [...and] those wanting to ensure that the article would not undermine NATO’.<sup>87</sup> This is reflected, first of all, in the kind of aid and assistance that EU Member States are legally obliged to provide under Article 42(7). The wording ‘*by all the means in their power*’ seems to suggest that the assistance offered can be either civil or military in kind, depending on the means Member States have at their disposal and the nature and gravity of the armed aggression.<sup>88</sup> An explicit reference to military means appeared in Article 4 BT and later Article 5 of the Modified Brussels Treaty (MBT), but was then abandoned in draft Article I-40(7) CT. Despite this, the fact that there is no expressed exclusion seems to imply that the type of aid and assistance that the Member States are compelled to provide could potentially also include military means.<sup>89</sup>

The article’s placement in Section 2, under the Provisions on the Security and Defence Policy, strongly supports this interpretation.<sup>90</sup> This argument is further reinforced by the inclusion of the Irish and NATO clauses that follow, as their presence would be unnecessary if military means were not contemplated. Moreover, unlike the phrasing ‘as it deems necessary’ in Article 5 NAT, which grants Allies discretion over the nature, timing, and scale of their response,<sup>91</sup> the wording ‘by all the means in their power’ in Article 42(7) TEU appears to allow far less flexibility.<sup>92</sup> This has led some authors to argue that, unlike Article 5 NAT, Article 42(7) TEU ‘entails an *unconditional obligation* of mutual assistance’.<sup>93</sup> Yet, the presence of the Irish and NATO clauses does pose conditions, as will be analysed in Sections 1.6 and

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<sup>86</sup> House of the Oireachtas, ‘EU Issues - Dáil Éireann Debate - Written answers by the Irish Minister for Foreign Affairs and Trade Charles Flanagan’ (27 September 2016) <<https://www.oireachtas.ie/en/debates/question/2016-09-27/467/>> accessed 14 October 2024. For information on the other Member States, see, e.g. Cirlig (n 45) 6; see also Suzana Elena Anghel and Carmen-Cristina Cirlig, ‘Activation of Article 42(7) TEU: France’s request for assistance and Member States’ responses’ (Briefing, European Parliamentary Research Service, December 2015), 2 <<https://www.europarl.europa.eu/EPRS/EPRS-Briefing-573883-Activation-of-article-42-7-FINAL.pdf>> accessed 20 September 2024.

<sup>87</sup> Claire Mills, ‘France and Article 42(7) of the Treaty on the European Union’ (Briefing Paper 7390, House of Commons, 18 November 2015), 3 <<https://researchbriefings.files.parliament.uk/documents/CBP-7390/CBP-7390.pdf>> accessed 20 September 2024; see also Cirlig (n 45) 2.

<sup>88</sup> Sari (n 21) 434-435.

<sup>89</sup> Reichard (n 24) 201; Cirlig (n 45) 3; Perot, ‘The art of commitments’ (n 29) 53; Martin (n 20) 417-418.

<sup>90</sup> Hillion & Blockmans, and Martin have argued that for this reason it is not excluded that the provision of aid and assistance could also take the form of a CSDP mission or operation. See Hillion and Blockmans (n 77) 3; Martin (n 20) 420. Mogherini, however, excluded it when France invoked the clause in 2015.

<sup>91</sup> Fazio, ‘Collective defence in NATO’ (n 18) 8-9.

<sup>92</sup> Martin (n 20) 418-419; Sari (n 21) 438. The German Federal Court, however, clearly affirmed that the EU’s collective defence clause does not go beyond NATO’s collective defence clause. See German Federal Constitutional Court, Judgment on the Treaty of Lisbon (30 June 2009) para 386 <[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630\\_2bve000208en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630_2bve000208en.html)> accessed 20 January 2025.

<sup>93</sup> Blake and Mangiameli (n 16) 1228.

1.7. Therefore, much like NATO Allies, EU Member States are free to choose the type and scope of assistance.

## 1.5 THE EXPRESS REFERENCE TO ARTICLE 51 OF THE UNITED NATIONS CHARTER

Like Article 5 NAT, Article 42(7) TEU makes express reference to Article 51 UNC. This reference was first introduced in Article 4 BT, and kept in Article 5 MBT and Article I-41(7) CT. This is because Article 51 UNC allows the members of the international community to act in both individual and collective self-defence in case of an armed attack directed against one of them, without previous authorisation by the UN Security Council. Both Article 5 NAT and Article 42(7) TEU are expressions of the right of collective defence and, therefore, the obligations they envisage must be consistent with Article 51 UNC.<sup>94</sup>

## 1.6 THE IRISH CLAUSE

This clause did not form part of either Article 4 BT or Article 5 MBT. It first appeared in the Maastricht Treaty,<sup>95</sup> primarily in response to Ireland's concerns about neutrality, and later made its way into the collective defence clause with the draft CT and later the LT.<sup>96</sup> The provision is generally understood to refer to militarily non-aligned Member States and countries with long-standing traditions of neutrality – currently Austria, Cyprus, Ireland and Malta – or special security and defence arrangements – such as those with Denmark, which until 2022 had an opt-out from the CSDP.<sup>97</sup> The clause no longer applies to Finland and Sweden, which joined NATO in 2023 and 2024, respectively.

These 'special status' countries are not required to disregard their positions to comply with mutual defence obligations. According to Sari, only these Member States are entitled to decline to provide military assistance when the gravity of the situation would call for a military response.<sup>98</sup> However, Article 42(7) TEU does not clearly state which countries are covered by this clause and, this is something that cannot be determined without looking at the drafting history of the article.<sup>99</sup> According to some scholars, the clause could potentially apply also to Member States like Germany, where parliamentary authorisation of the use of force is constitutionally required.<sup>100</sup> As Martin suggested, if a Member States' parliament

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<sup>94</sup> An in-depth analysis and discussion of collective defence in international law is outside the scope of this article. A brief overview is, however, essential to understand EU Member States' collective defence obligations and how they relate to UN principles.

<sup>95</sup> Article IJ.4(4)(n 3).

<sup>96</sup> Protocol on the concerns of the Irish people on the Treaty of Lisbon [2013] OJ L60/132 Article 3.

<sup>97</sup> Council of the EU, 'EU defence cooperation: Council welcomes Denmark into PESCO and launches the 5th wave of new PESCO projects' (Press Release, 23 May 2023), <<https://www.consilium.europa.eu/en/press/press-releases/2023/05/23/eu-defence-cooperation-council-welcomes-denmark-into-pesco-and-launches-the-5th-wave-of-new-pesco-projects/>> accessed 4 October 2024.

<sup>98</sup> Sari (n 21) 435.

<sup>99</sup> Reichard (n 24) 211; Martin (n 20) 419.

<sup>100</sup> Cirlig (n 45) 4; Perot, 'The art of commitments' (n 29) 52; Martin (n 20) 419. The UK as well, at the time. As reported by Mills, 'The Government ha[d] stated its intention to seek the approval of the House before committing military forces to action against ISIS in Syria. However, France's invocation of a treaty obligation ha[d] raised questions among many observers as to whether a treaty obligation represents a critical national

refuses to authorise the use of military force such a legal obstacle would exclude the State's participation in military operations without it being considered in breach of the obligation to provide aid and assistance under Article 42(7) TEU.<sup>101</sup> This confirms that the obligations arising under Article 42(7) TEU may be better understood as obligations of result rather than of means. In the case of an obligation of result, a state is generally presumed to be in breach if the envisaged outcome is not achieved, unless it can invoke a lawful excuse. By contrast, an obligation of means requires that a state undertakes appropriate and reasonable efforts, irrespective of whether the intended outcome is ultimately attained.

The EU's collective defence clause seemingly suggests that various degrees of commitment were envisioned for each member state based on the unique nature of their respective security and defence policies. Yet, this would translate in an evident asymmetry in military obligations, undermining the core purpose of the mutual defence clause, which is to ensure an equal sense of security among all parties involved.<sup>102</sup> The fact that Ireland – and initially Germany, which now also provides lethal assistance – have, through the EPF, provided non-lethal military support to Ukraine, which is not an EU Member State but a candidate country, in the context of Russia's war of aggression, suggests that this category of Member States would not be completely exonerated from the legal obligation to provide aid and assistance in the event of an invocation of Article 42(7) TEU; rather, they would be entitled to choose means of assistance which are not incompatible with their status or domestic law requirements.<sup>103</sup> This contrasts with the argument that Member States are called 'to examine on a case-by-case basis whether their status requires non-participation' with the conclusion varying depending on the country.<sup>104</sup>

However, it should be noted that the CJEU has, in principle, no jurisdiction on CFSP and CSDP, and, therefore, Article 42(7) TEU.<sup>105</sup> The CJEU only has jurisdiction over Article 222 TFEU.<sup>106</sup> Therefore, as with NATO, if any Member State, whether or not it falls within the aforementioned category, decides to provide little or no aid and assistance at all, there is no sanctioning mechanism to compel it to act otherwise.<sup>107</sup>

## 1.7 THE NATO CLAUSE

The 'NATO clause', like the Irish clause, was not included in Article 5 MBT but was later incorporated into Article I-41(7) CT. Based on this clause, special caveats also apply to the 23 EU Members States that are members of NATO. This seems to imply that, for

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interest and, therefore, whether prior parliamentary approval would now need to be sought for expanding UK military operations against ISIS'. See Mills (n 87) 4-5.

<sup>101</sup> Martin (n 20) 419.

<sup>102</sup> Reichard (n 24) 211; Blake and Mangiameli (n 16) 1228-1229.

<sup>103</sup> House of the Oireachtas, 'Ukraine War Dáil Éireann Debate' (8 May 2024)

<<https://www.oireachtas.ie/en/debates/question/2024-05-08/74/>> accessed 20 September 2024; German Federal Government, 'The arms and military equipment Germany is sending to Ukraine' (19 August 2024)

<<https://www.bundesregierung.de/breg-en/news/military-support-ukraine-2054992>> accessed 20 September 2024; see also Cirlig (n 45) 4; Martin (n 20) 416.

<sup>104</sup> Blake and Mangiameli (n 16) 1229; see also Dyson & Konstadinides (n 71) 69.

<sup>105</sup> TEU (n 2) Article 24(1); and TFEU (n 47) Article 275; see also Panos Koutrakos, 'Judicial Review in the EU's Common Foreign and Security Policy' (2018) 67(1) International and Comparative Law Quarterly 1.

<sup>106</sup> Cirlig (n 45) 7; Sari (n 21) 425.

<sup>107</sup> Fazio, 'Collective defence in NATO' (n 18) 9.

members of both organisations, mutual defence obligations arising from the NAT have primacy over those arising from the TEU.<sup>108</sup> This is consistent with Article 8 NAT,<sup>109</sup> as well as Article 30(2) VCLT.<sup>110</sup>

Therefore, the EU's mutual defence obligation would only apply as long as it did not conflict with the prevailing obligation under the NAT.<sup>111</sup> For this reason, before its invocation in 2015, it was thought that the EU's mutual defence clause could only be triggered for attacks against non-NATO EU Member States.<sup>112</sup> The French case has shown, however, that, in the event of an attack, members of both organisations can choose which of the two articles to invoke. It has also revealed that calling for one does not automatically trigger the other, though this does not preclude the possibility of simultaneously invoking both clauses if necessary.<sup>113</sup> As highlighted by Fiott, 'such a situation would raise chain of command, financing and transportation considerations'.<sup>114</sup>

The article could also potentially be invoked by a non-NATO EU Member State against a non-EU NATO Ally, unlike Article 5 MBT.<sup>115</sup> In hypothesis, if attacked, Cyprus – or Greece which is in NATO, however – could, for example, activate the EU's collective defence clause against Turkey.<sup>116</sup> As a matter of fact, in 2020 Greece and Turkey were on the verge of war in the Eastern Mediterranean and, at one point, the Greek government made express reference to Article 42(7) TEU.<sup>117</sup> In such a scenario, members of both organisations could be subject to competing requests for assistance as they have only one set forces. Therefore, NATO obligations would probably take precedence over European

<sup>108</sup> Blake and Mangiameli (n 16) 1217.

<sup>109</sup> North Atlantic Treaty, 4 April 1949, 63 Stat. 2241, 34 UNTS 243, Article 8.

<sup>110</sup> Vienna Convention on the Law of Treaties, 22 May 1969, 1155 UNTS 331, Article 30(2).

<sup>111</sup> As Sari has pointed out, this, however, is not the case for Article 222 TFEU. He argues that if a terrorist attack or a man-made disaster rises to the level of an armed attack or aggression, the solidarity clause could apply in parallel with the EU and NATO's mutual defence clauses. In such cases, however, military assistance provided under Article 222 is not subject to the requirement that it be compatible with commitments undertaken within NATO. See Sari (n 21) 439.

<sup>112</sup> Reichard (n 24) 221.

<sup>113</sup> Sari (n 2121) 425 and 435; Bakker et al (n 19) 26; Daniel Fiott, 'Rising Risks: Protecting Europe with the Strategic Compass' (CSDS Policy Brief 10/2022, Centre for Security, Diplomacy and Strategy, 12 May 2022), 2 <<https://csds.vub.be/publication/rising-risks-protecting-europe-with-the-strategic-compass/>> accessed 20 September 2024.

<sup>114</sup> Fiott, 'Rising Risks' (n 113) 3.

<sup>115</sup> The 2003 Berlin Plus framework agreement consists of classified letter exchanges between then-EU High representative Javier Solana and then-NATO Secretary General Lord Robertson. In one such letter, Solana allegedly stated that the ESDP and, therefore, also the EU's mutual defence clause, would never be used against a NATO Ally. However, as Reichard noted, the Berlin Plus arrangements are not binding. Reichard (n 24) 222.

<sup>116</sup> Since Cyprus joined the EU in 2004, formal cooperation between the two institutions has stalled due to the unresolved dispute between Turkey, a non-EU NATO Ally, and Cyprus, a non-NATO EU Member State, over the latter's sovereignty. Twenty years later, seemingly insurmountable obstacles still stand in the way of a peace deal and the two countries keep using their respective leverage, Turkey within NATO and Cyprus within the EU, to prevent formal meetings between the two institutions, blocking formal cooperation. For more information, see, e.g., Simon J Smith and Carmen Gebhard, 'EU–NATO relations: running on the fumes of informed deconfliction' (2017) 26(3) European Security 303.

<sup>117</sup> Deen et al (n 29) 41-42; see also Elie Perot, 'Solidarity and Deterrence in the Eastern Mediterranean: An Analysis of the Delicate Question of Collective Defence Between EU Member States Vis-à-Vis Turkey' (13/2021 Fondation pour la recherche stratégique (FRS), June 2021), 11-12 <<https://www.frstrategie.org/sites/default/files/documents/publications/recherches-et-documents/2021/132021.pdf>> accessed 16 June 2025.

obligations.<sup>118</sup> Still, whether this precedence would truly apply also depends on the circumstances of the clause's invocation.<sup>119</sup>

Additionally, this primacy of NATO over EU commitments does not amount to a 'right of first refusal' in favour of NATO. Despite the fact that the 2003 Berlin Plus arrangements did include a right of first refusal for NATO, even for peacekeeping operations, the launch of Operation Artemis in the Democratic Republic of Congo in June 2003 made it very clear that this was not the case.<sup>120</sup> The 1999 Helsinki European Council Conclusions had stated that the EU would act only in instances 'where NATO as a whole is not engaged',<sup>121</sup> but as pointed out by Blake & Mangiameli, 'this principle is a matter of policy and not of law and in no way means that the EU may only act when NATO has refused to implement a special operation'.<sup>122</sup> The two organisations have, in fact, conducted parallel operations in the same geographical areas, such as in Kosovo, Afghanistan and the Horn of Africa.

Finally, Reichard noted that, were a non-NATO EU Member State to be attacked, it could benefit from NATO's mutual security guarantee 'through the back door'.<sup>123</sup> Indeed, were Ireland to be attacked, for example, it is hard to imagine that the US and the UK would refrain from intervening or impose missile restrictions; or at least it was hard to imagine before Trump returned to the White House.

## 2 STRATEGIC ANALYSIS

'Mutual assistance clauses serve a dual purpose. They commit their signatories to stand up to a common threat and are thereby meant to deter potential aggressors. Their dual purpose places them at the crossroads between war and peace and the intersection between law and strategy'.<sup>124</sup> With this dual role in mind, this Section analyses the 2016 EUGS and the 2022 Strategic Compass, as well as their related implementation strategies and progress reports. The strategic analysis reveals that, despite the EU's growing role in defence, the Union places greater emphasis on unconventional threats – such as terrorism, cyber, hybrid, and space-based threats – than on traditional threats, which Article 42(7) TEU, like Article 5 NAT, was originally designed to address. The fact that this strategic focus has remained largely unchanged, even in the face of Russia's war of aggression against Ukraine, suggests that the primacy of NATO's mutual defence obligations over those of the EU is grounded not only in legal hierarchy but also in the EU's limited capacity and mandate in the area of collective defence. While recent EU initiatives reflect growing ambition, they have yet to signal a fundamental rebalancing toward territorial defence.

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<sup>118</sup> Perot, 'The art of commitments' (n 29) 52.

<sup>119</sup> Fazio, 'What happens if Trump invades Greenland?' (n 50).

<sup>120</sup> Daniel Keohane, 'ESD and NATO' in Giovanni Grevi et al (eds), *European Security and Defence Policy: The First 10 Years (1999-2009)* (European Union Institute for Security Studies 2009) 131; Reichard (n 24) 130.

<sup>121</sup> European Council, Presidency Conclusions, Helsinki, 10-11 December 1999, para 27.

<sup>122</sup> Ibid; Blake and Mangiameli (n 16) 1217.

<sup>123</sup> Reichard (n 24) 222.

<sup>124</sup> Sari (n 21) 406.



## 2.1 THE 2016 GLOBAL STRATEGY FOR THE EUROPEAN UNION'S FOREIGN AND SECURITY POLICY – SHARED VISION, COMMON ACTION: A STRONGER EUROPE

As the title suggests, the EUGS, which covered not only security and defence but all aspects of EU external action, aimed to initiate a new phase of European integration via common action, rather than merely developing a single strategic vision like the previous 2003 European Security Strategy (ESS).<sup>125</sup>

Unveiled by then-HR/VP Federica Mogherini on 28 June 2016, the EUGS was adopted at a time when Europe was grappling with both internal and external challenges, including Britain's decision to leave the EU, ISIS-driven terrorism,<sup>126</sup> rising migration, and Russia's revanchism, which had culminated in the illegal annexation of the Crimean Peninsula in March 2014, following its recognition of Abkhazia and South Ossetia's independence in August 2008. As a consequence of this new strategic landscape, the word 'defence' was mentioned 57 times in the EUGS – 50 more than in the ESS – with 'strategic autonomy' featuring for the first time in a European strategy document.<sup>127</sup>

'The European Union will promote peace and *guarantee the security of its citizens and territory*', the Strategy claimed,<sup>128</sup> seemingly suggesting that the EU was preparing to take on a more active role in collective defence. To this end, the EUGS called for a sectoral strategy, the Implementation Plan on Security and Defence (IPSD),<sup>129</sup> which aimed to transform the EU into a more autonomous security and defence actor, particularly in the wake of Donald Trump's first election victory as US President on 8 November 2016.<sup>130</sup> This was followed by the adoption of the European Defence Action Plan (EDAP),<sup>131</sup> comprising measures, such as the European Defence Fund (EDF), discussed later in this Section, which were designed

<sup>125</sup> Nathalie Tocci, 'The making of the EU Global Strategy' (2016) 37(3) Contemporary Security Policy 461, 462.

<sup>126</sup> Nash Jenkins, 'A Timeline of Recent Terrorist Attacks in Europe' (Time, 20 December 2016) <<https://time.com/4607481/europe-terrorism-timeline-berlin-paris-nice-brussels/>> accessed 15 August 2025.

<sup>127</sup> The concept had been first mentioned in the European Council Conclusions on CSDP of December 2013 in relation to defence industry, fifteen years after the 1998 Franco-British Saint Malo declaration had called for the Union to develop 'the capacity for autonomous action, backed up by credible military forces [...] supported by a strong and competitive European defence industry and technology'. See House of Commons, 'Declaration on European Defence, British-French Summit, St Malo, 3-4 December 1998' (HC 39, 1998-99, UK) <<https://publications.parliament.uk/pa/cm199899/cmselect/cmdfence/39/39w17.htm>> accessed 13 May 2025.

<sup>128</sup> EUGS (n 4) para 1, 7; emphasis added.

<sup>129</sup> Council of the EU, 'Council conclusions on implementing the EU Global Strategy in the area of Security and Defence' (14149/16, 14 November 2016) <<https://www.consilium.europa.eu/media/22459/eugs-conclusions-st14149en16.pdf>> accessed 13 May 2025; see also Council of the EU, 'Implementation Plan on Security and Defence' (14392/16, 14 November 2016) <<https://www.consilium.europa.eu/media/22460/eugs-implementation-plan-st14392en16.pdf>> accessed 18 February 2025.

<sup>130</sup> As pointed out by Sus, 'the unique interinstitutional position of the HR gave Mogherini the advantage in combining the various ideas floating in the policy stream and framing them all as linked to the EUGS's implementation, and thereby achieving wide-ranging policy change'. See, Monika Sus, 'Supranational entrepreneurs: the High Representative and the EU global strategy' (2021) 97(3) International Affairs 823, 840.

<sup>131</sup> European Commission, 'European Defence Action Plan: Towards a European Defence Fund' (Press Release, 30 November 2016) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_16\\_4088](https://ec.europa.eu/commission/presscorner/detail/en/ip_16_4088)> accessed 18 February 2025.

to help EU Member States boost defence research and invest more efficiently on joint defence capabilities.

The 2016 EUGS made express reference to the mutual assistance clause, which had been invoked for the first time only 7 months earlier, in the aftermath of the Paris attacks, for all the reasons and with the implications discussed in detail in the previous sections. ‘Mutual assistance’ is mentioned no less than 6 times in the document. Among the key priorities of the EU external action, it is stated that

‘Member States must translate their commitments to mutual assistance and solidarity enshrined in the Treaties into action. The EU will step up its contribution to Europe’s collective security, working closely with its partners, beginning with NATO.’<sup>132</sup>

[...] While NATO exists to defend its members – most of which are European – from external attack, [...] Europeans must be better equipped, trained and organised to contribute decisively to such collective efforts, as well as to act autonomously if and when necessary [...].<sup>133</sup>

Specifically, the Strategy called for deepening the partnership with NATO ‘through coordinated defence capability development, parallel and synchronised exercises, and mutually reinforcing actions to build the capacities of our partners, *counter hybrid and cyber threats*, and promote maritime security’.<sup>134</sup> A month after the Strategy’s release, the EU and NATO adopted their first joint declaration, with the purpose of strengthening cooperation in 7 key areas, including hybrid threats, maritime operations, cybersecurity, defence capability development, partner capacity building, defence industry collaboration and joint exercises.<sup>135</sup> On 6 December 2016, the Council<sup>136</sup> and the NAC,<sup>137</sup> endorsed 42 related proposals. The following year, 32 additional proposals were approved expanding cooperation into these as well as new areas such as counterterrorism, women, peace and security, and military

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<sup>132</sup> EUGS (n 4) 9.

<sup>133</sup> Ibid 20.

<sup>134</sup> Ibid 37, emphasis added.

<sup>135</sup> European Parliament, ‘Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization’ (n 30).

<sup>136</sup> Council of the EU, ‘Council Conclusions on the Implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization’ (15283/16, 6 December 2016)

<[https://www.europarl.europa.eu/cmsdata/121581/ST\\_15283\\_2016\\_INIT\\_EN.pdf](https://www.europarl.europa.eu/cmsdata/121581/ST_15283_2016_INIT_EN.pdf)> accessed 18 February 2025.

<sup>137</sup> NATO, ‘Statement on the implementation of the Joint Declaration signed by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization’ (Press Release (2016) 178, 6 December 2016)

<[https://www.nato.int/cps/en/natohq/official\\_texts\\_138829.htm](https://www.nato.int/cps/en/natohq/official_texts_138829.htm)> accessed 18 February 2025.

mobility.<sup>138</sup> In 2018, a second joint declaration<sup>139</sup> introduced another area: resilience to chemical, biological, radiological and nuclear-related (CBRN) risks.

Additionally, the Strategy stated that '[i]ncreased investment in and *solidarity on counter-terrorism* are key' and that 'the EU [would] support the swift recovery of Members States in the event of attacks through enhanced efforts on security of supply, the protection of critical infrastructure, and strengthening the voluntary framework for *cyber crisis management*'.<sup>140</sup>

The 2016 EUGS was followed by three implementation strategies in 2017, 2018 and 2019. The 2017 Implementation Strategy outlined key initiatives intended to advance the EU's role as a security and defence actor. It noted that a Coordinated Annual Review on Defence (CARD) – designed to synchronise Member States' defence planning – had been agreed by the Council, with a first full trial run scheduled for autumn 2017.<sup>141</sup> The Strategy also reported that the Council had resolved to examine the activation of Permanent Structured Cooperation (PESCO), a concept introduced by the 2007 LT,<sup>142</sup> which, according to the Strategy, had 'the potential to make the definitive leap forward in European security and defence'.<sup>143</sup> In addition, it highlighted the establishment of the EDF aimed at incentivising Member States to adopt a more collaborative approach by supporting coordination and enhancement of national defence research spending. Together CARD, PESCO and the EDF were presented as mutually reinforcing instruments, with the European Defence Agency (EDA) identified as playing a key supporting role.<sup>144</sup>

The First Implementation Report also highlighted progress made on EU-NATO cooperation, described as a 'qualitative leap forward'.<sup>145</sup> In addition to the 42 set of proposals agreed in Warsaw, the 2017 Implementation Report referred to the establishment of *a new European Centre for Countering Hybrid Threats in Helsinki* and emphasised joint efforts undertaken by the two organisations in ensuring coherence between the NATO Defence Planning Process (NDPP) and the EU Capability Development Plan (CDP).<sup>146</sup> The 2018 and 2019 Implementation Strategies also highlighted how the EU and NATO had successfully

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<sup>138</sup> Council of the EU, 'Council conclusions on the Implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization' (14802/17, 5 December 2017)

<<https://www.consilium.europa.eu/media/31947/st14802en17.pdf>> accessed 18 February 2025; NATO, 'Common set of new proposals on the implementation of the Joint Declaration signed by the President of the European Council, the President of the European Commission and the Secretary General of the North Atlantic Treaty Organization' (Press Release (2017) 174, 5 December 2017)

<[https://www.nato.int/cps/fr/natohq/official\\_texts\\_149522.htm?selectedLocale=en](https://www.nato.int/cps/fr/natohq/official_texts_149522.htm?selectedLocale=en)> accessed 18 February 2025.

<sup>139</sup> Council of the EU, 'Joint Declaration on EU-NATO Cooperation by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization' (10 July 2018) <[https://www.consilium.europa.eu/media/36096/nato\\_eu\\_final\\_eng.pdf](https://www.consilium.europa.eu/media/36096/nato_eu_final_eng.pdf)> accessed 18 February 2025.

<sup>140</sup> European External Action Service, 'From Shared Vision to Common Action: Implementing the EU Global Strategy: Year 1' (10 January 2017), 21, emphasis added

<[https://www.eeas.europa.eu/sites/default/files/eugs-report-full\\_brochure\\_year\\_1.pdf](https://www.eeas.europa.eu/sites/default/files/eugs-report-full_brochure_year_1.pdf)> accessed 20 September 2025.

<sup>141</sup> Ibid 22.

<sup>142</sup> TEU (n 2) Article 42(6).

<sup>143</sup> EEAS, 'Implementing the EU Global Strategy: Year 1' (n 140) 22 and 23.

<sup>144</sup> Ibid 23.

<sup>145</sup> Ibid 24.

<sup>146</sup> EEAS, 'Implementing the EU Global Strategy: Year 1' (n 140) 24.

deepened their partnership in the framework of the two joint declarations of 2016 and 2018, especially on military mobility, counterterrorism, cyber and maritime security.<sup>147</sup>

Despite the adoption of new security and defence initiatives, however, none of these documents referred to the mutual defence or the solidarity clauses. The Council Conclusions of June 2019 called on 'Member States to discuss the lessons identified following the first activation of Article 42.7 TEU'<sup>148</sup> and reminded them of the importance of mutual assistance and solidarity. Yet, there is no indication that such discussions have taken place.

## 2.2 THE 2022 STRATEGIC COMPASS FOR SECURITY AND DEFENCE

The product of a two-year reflection process conducted by former HR/VP Joseph Borrell in tandem with the European Commission and EU Member States,<sup>149</sup> the Strategic Compass was adopted by the Foreign Affairs and Defence Ministers of the 27 EU Member States on 21 March 2022, roughly a month after the war in Ukraine started, and endorsed by EU Heads of State and Government a few days later. Unlike previous EU security strategies, the Strategic Compass is characterised by a common threat analysis and a bottom-up approach.<sup>150</sup>

The word 'defence' is mentioned no fewer than 234 times in the strategy – including, for the first time ever, in the title – over 4 times more than in the EUGS, reflecting the heightened emphasis on defence as a consequence of war on the EU's doorstep. In addition, mutual assistance is referred to 12 times in the Compass – twice as much than in the previous strategy.

In order to be able to act more rapidly and assertively, EU Member States have agreed in the Compass to develop an RDC of up to 5,000 troops by 2025. The RDC will replace the EU Battlegroups, multinational rapid reaction forces created for crisis management operations outside the EU which had become operational in 2007 but were never deployed. For the first time, the EU also stated its intention to conduct regular live exercises to increase defence interoperability and readiness. 'We will continue to invest in our mutual assistance under Article 42(7) of the Treaty on European Union as well as solidarity under Article 222 of the Treaty on the Functioning of the European Union, in particular through frequent exercises', the Compass states.<sup>151</sup> However, as with the previous strategy, the focus seems to remain on non-traditional threats. As Fiott has pointed out,<sup>152</sup> these regular exercises seem, in fact, to be mostly aimed at responding to non-traditional attacks such as cyber attacks,<sup>153</sup>

<sup>147</sup> European External Action Service, 'Implementing the EU Global Strategy: Year 2' (25 June 2018), 8 <[https://www.eeas.europa.eu/sites/default/files/eugs\\_annual\\_report\\_year\\_2.pdf](https://www.eeas.europa.eu/sites/default/files/eugs_annual_report_year_2.pdf)> accessed 24 February 2025; European External Action Service, 'The European Union's Global Strategy Three Years On, Looking Forward' (13 June 2019), 11 <[https://www.eeas.europa.eu/sites/default/files/eu\\_global\\_strategy\\_2019.pdf](https://www.eeas.europa.eu/sites/default/files/eu_global_strategy_2019.pdf)> accessed 24 February 2025.

<sup>148</sup> Council of the EU, 'Council Conclusions on Security and Defence in the context of the EU Global Strategy' (10048/19, 17 June 2019) <<https://www.consilium.europa.eu/media/39786/st10048-en19.pdf>> accessed 24 February 2025.

<sup>149</sup> Council of the EU, 'Council Conclusions on Security and Defense' (8910/20, 17 June 2020) <<https://www.consilium.europa.eu/media/44521/st08910-en20.pdf>> accessed 24 February 2025. See also, Monika Sus, 'Exploring the dynamics of policy change in EU security and defence: policy entrepreneurs behind the Strategic Compass' (2023) 47(4) *West European Politics* 942, 948, 951, 952, 953, 954 and 956.

<sup>150</sup> EEAS, 'A Strategic Compass for Security and Defence' (n 4) 7.

<sup>151</sup> *Ibid* 28. France played a leading role in pushing for this. See, e.g., Sus, 'Exploring the dynamics of policy change in EU security and defence' (n 149) 954.

<sup>152</sup> Fiott, 'Rising Risks' (n 113).

<sup>153</sup> EEAS, 'A Strategic Compass for Security and Defence' (n 4) 35 and 39.

hybrid attacks<sup>154</sup> and even space-based attacks.<sup>155</sup> Indeed, as Blockmans et al also noted, there is a strong focus on hybrid threats and tactics (the term hybrid appears 46 times) in the Compass, which ‘seems out of sync with the fact that Russia is waging a highly conventional war against Ukraine [...]’.<sup>156</sup> A strong emphasis is placed on the development of *the EU Hybrid Toolbox*, *the Cyber Resilience Act*, and further development of *the Cyber Diplomacy Toolbox*, the Foreign Information Manipulation and Interference (FIMI) Toolbox and adoption of *the EU Space Strategy for security and defence*.

There is no mention in the Compass of how the EU intends to prepare for the eventuality of a traditional attack on its soil amid Russia’s aggression of Ukraine. The Compass merely states that the EUMS could play a role in ‘the coordination of logistical support and assistance to Member States and third countries in a crisis, as well as the implementation of EU instruments such as the European Peace Facility or, upon Member States’ request, the mutual assistance clause, in line with the Treaty on European Union’.<sup>157</sup> This is because most EU Member States are also members of NATO and consider its mutual defence guarantee, enshrined in Article 5 NAT, the cornerstone of their security. However, following the outcome of the 2024 US Presidential election, which saw Donald Trump elected for a second non-consecutive term, this reliance faces new strategic uncertainty.<sup>158</sup> With the potential to unlock €800 billion for defence, the ReArm Europe Plan/Readiness 2030 – unveiled by the European Commission two months after Trump’s return to the White House – is a clear attempt to develop autonomous defence capabilities and reduce dependency from the US. The recent agreement between France and the UK to deepen bilateral cooperation on nuclear deterrence<sup>159</sup> can also be seen as a direct response to the growing uncertainty surrounding the US nuclear umbrella, despite reassurances made at the NATO Hague Summit.<sup>160</sup>

As in the previous Strategy, considerable attention is given to the EU-NATO relationship. The Executive Summary states that ‘A stronger and more capable EU in the field of security and defence will contribute positively to global and transatlantic security and is complementary to *NATO, which remains the foundation of collective defence for its members*’. The partnership with NATO is the first topic addressed in the ‘Partner’ section – one of four pillars of the Compass, alongside Act, Secure, and Invest. ‘The EU’s strategic partnership with NATO is essential for our Euro-Atlantic security’, the Compass affirms.<sup>161</sup> The

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<sup>154</sup> Ibid 34 and 39.

<sup>155</sup> Ibid 34 and 36.

<sup>156</sup> Steven Blockmans et al, ‘The EU’s Strategic Compass – A guide to reverse strategic shrinkage?’ (CEPS Policy Insights 2022, Centre for European Policy Analysis, 14 March 2022), 8 <[https://cdn.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-14\\_EU-Strategic-Compass.pdf](https://cdn.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-14_EU-Strategic-Compass.pdf)> accessed 24 February 2024.

<sup>157</sup> EEAS, ‘A Strategic Compass for Security and Defence’ (n 4) 38.

<sup>158</sup> Fazio, ‘Collective defence in NATO’ (n 18) 8-9. See also Emma Ashford and MacKenna Rawlins ‘American Roulette: Scenarios for US Retrenchment and the Future of European Defense’ (Policy Paper, Stimson Center, 8 July 2024) <<https://www.stimson.org/2024/american-roulette-scenarios-for-us-retrenchment-and-the-future-of-european-defense/>> accessed 20 September 2024.

<sup>159</sup> UK Prime Minister’s Office and The Rt Hon Sir Keir Starmer KCB KC MP, ‘Northwood Declaration: 10 July 2025 (UK-France joint nuclear statement)’ (Press Release, 10 July 2025) <<https://www.gov.uk/government/news/northwood-declaration-10-july-2025-uk-france-joint-nuclear-statement>> accessed 12 July 2025.

<sup>160</sup> Federica Fazio, ‘A Dissenting Opinion on The Hague Summit: the Real Winner is NATO, Not Trump’ (DCU Brexit Institute, 30 June 2025) <<https://www.dcu.ie/blog/2151/dissenting-opinion-hague-summit-real-winner-nato-not-trump>> accessed 8 July 2025.

<sup>161</sup> EEAS, ‘A Strategic Compass for Security and Defence’ (n 4) 53, emphasis added.



document claims that cooperation with NATO will be further strengthened in the areas covered by the 2016 and 2018 Joint Declarations.<sup>162</sup>

The real game changer, according to the Compass, however, will be ‘moving to joint and inclusive exercises’, which will allow the two organisations to build trust, increase interoperability and deepen cooperation.<sup>163</sup> In 2022, under the Plan for Implementation of Parallel and Coordinated Exercises (PACE) 2022-2023, NATO staff joined the planning and conduct phases of the EU Integrated Resolve (IR) 22 exercise, focusing on the *management of hybrid crises* with internal and external dimensions.<sup>164</sup> The following March, staff from the European Commission, the General Secretariat of the European Council, the Council, and the EEAS participated in the planning and conduct of NATO’s crisis management exercise (CMX) 2023, *also focusing on a hybrid crisis scenario*.<sup>165</sup>

Finally, the Strategic Compass stresses the need to invest more and better in defence capabilities and cutting-edge technologies.

The Strategic Compass was followed by two Progress Reports in 2023 and 2024.

In relation to the mutual defence clause specifically, the 2023 Progress Report stated that ‘[t]o further strengthen our mutual assistance in case of an armed aggression, we have conducted exercises on Article 42(7) TEU in scenarios involving *cyber, hybrid and space-related threats*, and will continue to do so on a regular basis’.<sup>166</sup> This claim was reiterated in the 2024 Progress Report, which stressed that the EU ‘will continue to organise and conduct regular exercises with regard to Article 42(7)’.<sup>167</sup> In fact, the bulk of the ‘Secure’ sections in both Reports focuses on *countering hybrid, cyber and space threats*. This appears to confirm the earlier point: despite a shared recognition of the threat posed by the Russian Federation, the EU has yet to implement a credible military deterrent against it, despite calls from the European Parliament to operationalise Article 42.7 TEU<sup>168</sup> and clarifying its relationship with Article 5 NAT.<sup>169</sup>

The 2023 Progress Report also highlighted the role played by the EPF, which replaced and expanded the scope of the Athena mechanism and the African Peace Facility (APF) in 2018.<sup>170</sup> The report described the EPF as ‘a game changer’, as it has enabled the EU to

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<sup>162</sup> Ibid.

<sup>163</sup> Ibid 54.

<sup>164</sup> For more information, see <[https://www.eeas.europa.eu/eeas/eu-integrated-resolve-2022-eu-ir22-parallel-and-coordinated-exercisespace\\_en](https://www.eeas.europa.eu/eeas/eu-integrated-resolve-2022-eu-ir22-parallel-and-coordinated-exercisespace_en)> accessed 26 April 2024.

<sup>165</sup> For more information, see <[https://www.nato.int/cps/en/natohq/news\\_212527.htm](https://www.nato.int/cps/en/natohq/news_212527.htm)> accessed 26 April 2024.

<sup>166</sup> European External Action Service, ‘Annual Progress Report on the Implementation of the Strategic Compass for Security and Defence’ (20 March 2023) 9, emphasis added <[https://www.eeas.europa.eu/sites/default/files/documents/2023/StrategicCompass\\_1stYear\\_Report.pdf](https://www.eeas.europa.eu/sites/default/files/documents/2023/StrategicCompass_1stYear_Report.pdf)> accessed 26 April 2025.

<sup>167</sup> European External Action Service, ‘Annual Progress Report on the Implementation of the Strategic Compass for Security and Defence’ (18 March 2024), 12, emphasis added <[https://www.eeas.europa.eu/eeas/2024-progress-report-implementation-strategic-compass-security-and-defence\\_en](https://www.eeas.europa.eu/eeas/2024-progress-report-implementation-strategic-compass-security-and-defence_en)> accessed 26 April 2024..

<sup>168</sup> European Parliament, ‘Implementation of the common security and defence policy – annual report 2022 (2022/2050(INI))’ P9\_TA(2023)0010, para 3.

<sup>169</sup> European Parliament, ‘Implementation of the common security and defence policy – annual report 2024 (2024/2082(INI))’ P10\_TA(2025)0058, para 9.

<sup>170</sup> Article 41(2) TEU prohibits the financing of EU military operations through the EU budget, but Article 41(3) allows the Council to establish special mechanisms to manage the financing of the common costs of military operations. The Athena mechanism, established by Council Decision 2004/197/CFSP [2004] OJ

provide Ukraine with both non-lethal and lethal assistance<sup>171</sup> – something Rasi has described as the EU's 'first exercise of collective self-defence'.<sup>172</sup> The 2024 Progress report further noted the importance of the establishing of a dedicated Ukraine Assistance Fund (UAF) within the EPF.

With regards to the RDC, the Progress Reports claim that work to adapt the Battlegroups and operationalise the RDC is ongoing; three operational scenarios have been finalised on rescue and evacuation, the initial phase of stabilisation, and military support to humanitarian assistance and disaster relief.<sup>173</sup> Although designed for crisis management operations outside the EU, like its NATO counterpart, the NATO Response Force (NRF), replaced by the Allied Response Force (ARF) in July 2024, the RDC could also be employed for territorial defence. However, it is important to note that, at its launch, the NRF was nearly twice as large, with 9,500 troops;<sup>174</sup> the brigade-size force envisioned by the RDC may prove insufficient to respond to a crisis, let alone an armed aggression, and represents a further decrease in the EU's level of ambition compared to the 6,000 troops envisaged by the Battlegroups.<sup>175</sup> Therefore, much like its predecessors, the RDC might 'remain a paper tiger and lack concrete use'.<sup>176</sup>

Finally, the two reports highlighted progress made in strengthening the partnership with NATO. A Task Force on the resilience of critical infrastructures was established in June 2023 within the framework of the EU-NATO Structured Dialogue on Resilience in response to the sabotage of the Nord Stream pipelines, and a first structured dialogue on Space took place in December 2023.<sup>177</sup> Additionally, in January 2023, the two organisations had also agreed on a third joint declaration. The declaration notes progress made in the areas of the 2016 and 2018 declarations, condemns Russia's unlawful invasion of Ukraine, and announces that the EU and NATO will take their partnership 'to the next level'.<sup>178</sup> However, there is still no mention in the declaration of how the EU and NATO's mutual defence clauses relate to each other.

The 2023 Progress Report used identical language, adding that the EU's 2022 Strategic Compass and NATO's 2022 Strategic Concept 'provide a solid basis to further expand the

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L63/68, and the APF, created through Council Decision No 3/2003 of the ACP-EC Council of Ministers of 11 December 2003 [2003] OJ L345/108, were two such mechanisms.

<sup>171</sup> 2023 Progress Report, (n 166), at 8.

<sup>172</sup> Aurora Rasi, 'Providing Weapons to Ukraine: The First Exercise of Collective Self-defence by the European Union?', 9/1 European Papers (2024), 397-422.

<sup>173</sup> 2023 Progress Report (n 166) 8 and 9; 2024 Progress Report (n 167) 12.

<sup>174</sup> Guillaume Lasconjarias, 'The NRF: from a Key Driver of Transformation to a Laboratory of the Connected Forces Initiatives' (Research paper, NATO Defence College 88, January 2023), 4 <[https://www.files.ethz.ch/isn/157613/rp\\_88.pdf](https://www.files.ethz.ch/isn/157613/rp_88.pdf)> accessed 20 September 2024.

<sup>175</sup> The 1999 Helsinki Headline Goal aimed to develop a European Rapid Reaction Force by 2003 consisting of up to 15 brigades totalling up to 60,000 troops, ready to deploy within 60 days and sustain operations for at least one year. The 2010 Headline Goal scaled down the force from 15 brigades to 4 battalion-sized rapid response units (EU Battlegroups) totalling 6,000 troops, designed to deploy within 10 days of an EU decision, and sustain operations for 30 days, extendable to 120 days if resupplied.

<sup>176</sup> Blockmans et al (n 156) 3.

<sup>177</sup> 2024 Progress Report (n 167) 24; 2023 Progress Report (n 166) 19.

<sup>178</sup> NATO, 'Joint Declaration on EU-NATO Cooperation by the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization' (10 January 2023) <[https://www.nato.int/cps/en/natohq/official\\_texts\\_210549.htm](https://www.nato.int/cps/en/natohq/official_texts_210549.htm)> accessed 6 September 2024

partnership’.<sup>179</sup> Progress made in the implementation of the current 74 proposals has been reviewed 10 times (in June<sup>180</sup> and November 2017,<sup>181</sup> in June 2018,<sup>182</sup> 2019,<sup>183</sup> 2020,<sup>184</sup> 2021,<sup>185</sup> 2022,<sup>186</sup> 2023,<sup>187</sup> 2024<sup>188</sup> and 2025)<sup>189</sup> so far. The latest progress report, issued in June 2025, stresses the importance of developing an even more robust, coherent and complementary EU-NATO partnership.<sup>190</sup>

It is important to note that beyond PACE, the European Commission also participated in NATO’s exercises such as STEADFAST DUEL 2024 and – together with the EUMS – STEADFAST DETERRENCE and STEADFAST DAGGER 2024.<sup>191</sup> However, the EU did not participate in STEADFAST DEFENDER 2024, NATO’s largest Article 5 exercise since the Cold War, which was aimed at testing the Alliance’s new defence plans and its ability to rapidly deploy forces in defence of continental Europe. This reflects the fact that the EU’s focus – and that of its cooperation with NATO – remains primarily

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<sup>179</sup> 2023 Progress Report (n 166) 18 and 19.

<sup>180</sup> NATO, ‘Progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016’ (14 June 2017)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2017\\_06/20170619\\_170614-Joint-progress-report-EU-NATO-EN.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_06/20170619_170614-Joint-progress-report-EU-NATO-EN.pdf)> accessed 23 May 2025.

<sup>181</sup> NATO, ‘Second progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016’ (29 November 2017)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2017\\_11/171129-2nd-Joint-progress-report-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_11/171129-2nd-Joint-progress-report-EU-NATO-eng.pdf)> accessed 23 May 2025.

<sup>182</sup> NATO, ‘Third progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (8 June 2018)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2018\\_06/20180608\\_180608-3rd-Joint-progress-report-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_06/20180608_180608-3rd-Joint-progress-report-EU-NATO-eng.pdf)> accessed 23 May 2025.

<sup>183</sup> NATO, ‘Fourth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (17 June 2019)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2019\\_06/190617-4th-Joint-progress-report-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2019_06/190617-4th-Joint-progress-report-EU-NATO-eng.pdf)> accessed 23 May 2025.

<sup>184</sup> NATO, ‘Fifth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (16 June 2020)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2020/6/pdf/200615-progress-report-nr5-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2020/6/pdf/200615-progress-report-nr5-EU-NATO-eng.pdf)> accessed 23 May 2025.

<sup>185</sup> NATO, ‘Sixth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (3 June 2021)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2021/6/pdf/210603-progress-report-nr6-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2021/6/pdf/210603-progress-report-nr6-EU-NATO-eng.pdf)> accessed 20 September 2025.

<sup>186</sup> NATO, ‘Seventh progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (20 June 2022)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2022/6/pdf/220620-progress-report-nr7-EU-NATO-eng.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/220620-progress-report-nr7-EU-NATO-eng.pdf)> accessed 23 May 2025.

<sup>187</sup> NATO, ‘Eight progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (16 June 2023)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2023/6/pdf/230616-progress-report-nr8-EU-NATO.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2023/6/pdf/230616-progress-report-nr8-EU-NATO.pdf)> accessed 23 May 2025.

<sup>188</sup> NATO, ‘Ninth progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016 and 5 December 2017’ (13 June 2024)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2024/6/pdf/240613-progress-report-nr9-EU-NATO.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2024/6/pdf/240613-progress-report-nr9-EU-NATO.pdf)> accessed 23 May 2025.

<sup>189</sup> NATO, ‘Tenth progress report on the implementation of the common set of proposals endorsed by EU and NATO Councils on 6 December 2016 and 5 December 2017’ (10 June 2025)

<[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2025/6/pdf/250605-progress-report-nr10-EU-NATO.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2025/6/pdf/250605-progress-report-nr10-EU-NATO.pdf)> accessed 12 June 2025.

<sup>190</sup> Ibid 1.

<sup>191</sup> Ibid 11.

geared toward crisis management, prevention, and defence against non-traditional threats, rather than conventional territorial defence.

### 3 CONCLUSION

This article has examined the EU's mutual assistance clause to understand how credible it is and the type of legal responsibilities it imposes on the members of the Union. Today, the mutual defence clause, enshrined in Article 42(7) TEU and introduced almost two decades ago in Lisbon, provides a legal framework for EU Member States to engage in collective defence similar to Article 5 NAT for NATO Allies. It does so by committing them to an *obligation of result rather than means*.

The legal analysis has shown that the more ambiguous phrasing '*by all the means in their power*' employed by Article 42(7) TEU permits both civil and military assistance to be provided to EU members under aggression, while prioritising the achievement of the intended result. This means that, much like NATO Allies, EU Member States are left free to choose the means of assistance in a case of aggression. Therefore, although the obligations imposed by Article 42(7) TEU might seem more stringent than those imposed by Article 5 NAT, these obligations are, nonetheless, *obligations of result and not means*. Yet, unlike NATO's, these obligations are *automatic*, as they require no formal Council decision or conclusion to be implemented. At the same time, however, the presence of the Irish and NATO clauses renders these obligations *conditional*, as the means of assistance to be provided must align with the foreign and security policies of both neutral and non-aligned countries, in addition to those of NATO countries, collectively encompassing the totality of EU Member States.

Section 1.6 has explained that neutral and non-aligned members, as well as those requiring parliamentary authorisation of the use of force, are not exempted from providing assistance under Article 42(7) TEU. For the remaining 23 EU Member States, which are also NATO Allies, mutual defence obligations under Article 42(7) TEU apply, provided they do not conflict with those under Article 5 NAT. Importantly, however, the legal primacy of Article 5 does not grant NATO a 'right of first refusal', as illustrated by France's invocation of the EU's mutual defence clause in 2015 despite its NATO membership. Moreover, triggering the EU's Article 42(7) does not automatically activate NATO's Article 5, although the simultaneous invocation of both clauses by shared members is not precluded.

Finally, the section has pointed out that Article 42(7) TEU could potentially be triggered by a non-NATO EU Member State against a non-EU NATO Ally. Additionally, in the event of an attack, EU neutral or non-aligned countries could indirectly benefit from NATO's mutual security guarantee through their partnerships with NATO Allies. Similar to NATO though, no sanctioning mechanism exists to compel EU Member States to act in case of inaction or inadequate action, as the CFSP and CSDP fall outside the jurisdiction of the CJEU.

The strategic analysis has focused on the growing importance the EU has been placing on defence, and particularly the mutual defence clause, and related initiatives in this respect, including in cooperation with NATO. Although NATO remains the cornerstone of European defence, there are clear indications that, since 2016 (and even more so since 2022), the EU has been actively seeking to retool its CSDP instruments in response to the changing and more complex threat environment in order to play a more active role in defence.

The 2022 Strategic Compass has undoubtedly marked an important shift in the EU's approach to security and defence by providing a common threat analysis. However, much like the 2016 EUGS, despite the increased emphasis on the mutual defence clause and a stronger EU-NATO partnership, there seems to be a disproportionate focus by the EU on unconventional threats, such as potential cyber, hybrid and space attacks, without addressing how to prepare for traditional, large-scale military attacks. This has to do with the fact that the EU as a whole has no collective defence mandate, as Article 42(7) TEU envisions no formal role for the EU in the event of armed aggression on EU territory. While, in principle, both Article 5 NAT and Article 42(7) TEU cover traditional and non-traditional attacks, territorial defence continues to be viewed as the responsibility of NATO.

The start of the second Trump Presidency, with its uncertain commitment to defend not just Ukraine but NATO Allies as well, has intensified debates on European strategic autonomy and ways to reduce reliance on the US. The ReArm Europe Plan/Readiness 2030 and its Security Action for Europe (SAFE) fund,<sup>192</sup> represent a clear move in this direction, as do the White Paper for European Defence – Readiness 2030<sup>193</sup> and the recently proposed 2028-2034 Multiannual Financial Framework – worth nearly €2 trillion, the largest in the EU's history – of which €131 billion is earmarked for security, defence and space through the European Competitiveness Fund.<sup>194</sup>

However, building a competitive and autonomous European defence industry will not happen overnight. The EU remains highly dependent on American technology, including the F-35 fighter jets produced by Lockheed Martin – of which it has no equivalent alternative – as well as Patriot missile defence systems and other critical enablers. This dependence was further cemented in the recent EU-US Framework Agreement, under which the EU agreed 'to substantially increase procurement of military and defence equipment from the United States.'<sup>195</sup>

Therefore, despite the EU's response to the war in Ukraine and its post-2022 initiatives, the EU's ability to credibly threaten the use of force in the exercise of the right of collective defence remains a distant prospect, contingent, on the one hand, on the development of a common defence under Article 42(2) TEU or, potentially, through an intergovernmental arrangement outside of the EU legal framework, and, on the other, on the development of a strong European defence industrial base.

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<sup>192</sup> As the first pillar of the ReArm Europe Plan/Readiness 2030, this instrument aims to mobilise up to €150 billion in investments, reinforcing the EU's ability to act collectively in the security and defence domain. At the time of writing, 19 EU Member States have already expressed an interest and more are expected to do so ahead of the formal deadline for application of 30 November 2025. See European Commission, Defence Industry and Space 'SAFE | Security Action for Europe', (30 July 2025), available <[https://defence-industry-space.ec.europa.eu/eu-defence-industry/safe-security-action-europe\\_en](https://defence-industry-space.ec.europa.eu/eu-defence-industry/safe-security-action-europe_en)> accessed 18 August 2025.

<sup>193</sup> European Commission, 'White Paper for European Defence – Readiness 2030' (12 March 2025) <[https://commission.europa.eu/document/download/e6d5db69-e0ab-4bec-9dc0-3867b4373019\\_en](https://commission.europa.eu/document/download/e6d5db69-e0ab-4bec-9dc0-3867b4373019_en)> accessed 8 April 2025.

<sup>194</sup> European Commission, 'The 2028-2034 EU budget for a stronger Europe' (16 July 2025) <[https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en)> accessed 18 August 2025.

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