

Briefing Note

The EU Mutual Defence Clause and Greenland: What happens if Denmark asks for help according to Article 42 (7) TEU?

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The mutual defence clause was introduced in 2009 under Article 42 (7) of the Treaty of the European Union. It says that EU countries are obliged to assist a fellow member state that has become “a victim of armed aggression on its territory” and that this support should be consistent with potential NATO commitments. No formal procedure has been set out and the article does not say that the assistance should be military in nature, so countries such as Austria or Ireland that have a policy of neutrality, can still cooperate. Greenland is not EU territory, but it is listed in Article 349 of the Treaty on the Functioning of the European Union as “overseas countries and territories.” It is therefore closely associated with the EU – and it is of course part of the Danish Kingdom, a EU Member State. Therefore, the Mutual Defence Clause of the EU would be applicable for Greenland.

Introduction

The Treaty of Lisbon introduced Article 42(7) TEU in the Section on the Common Security and Defence Policy of the EU:

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.

The criteria for application of Article 42(7) TEU are (I) an armed aggression (II) on the territory of a Member State. In accordance with EU and international law, it is for the attacked Member State to take a political decision whether to invoke this Article in a given situation.

Once activated, this Article creates a legally binding obligation on all the Member States to provide aid and assistance to the attacked Member State(s) by all means in their power. While leaving a certain discretion as to the form of this aid and assistance, this obligation means that the assistance provided by each Member State should address the requirements and needs of the attacked Member State, which can go beyond the direct implications of the attack on its territory. The nature of this aid and assistance is therefore determined on a case-by-case basis.

Article 42(7) TEU contains two qualifications on the obligation to provide aid and assistance, namely that (I) it shall not prejudice the specific character of the security and defence policy of certain Member States; and (II) that it shall be consistent with commitments under NATO, which remains the foundation of the collective defence for those States that are members of it.

The Article does not define any procedure for its implementation.

Finally, Article 42(7) TEU does not explicitly require or provide for any role of EU institutions for its implementation. The decision whether to request assistance by invoking Article 42(7) TEU is a political decision of the Member State that experiences the armed aggression on its territory.

While the Article itself does not foresee a procedure in this regard, the invocation must be clear, unambiguous and addressed to all other Member States.

Scope of application of Article 42(7) TEU

The scope of Article 42(7) TEU is circumscribed by the abovementioned applicable criteria: an armed aggression on the territory of a Member State. Such armed aggression must be launched or directed from abroad, and may comprise armed aggressions by non-State actors, as well as an armed aggression as part of a hybrid campaign and/or in the form of a cyberattack, consistent with the relevant principles of international law.

Implementation of Article 42(7) TEU

The Article does not specify the procedure for implementing the assistance. Considering the armed aggression in question and the overall situation, it is for the concerned Member State to decide on the implementation. It can do so, for example, through direct contacts with the other Member States, but also through an organ or institution of the European Union – though this is not explicit in the Article. This gives the attacked Member State a high degree of flexibility as regards the implementation, allowing it to take into consideration the scale of the armed aggression, the required assistance, and the existing capacities of the Member States providing assistance.

Nature of the aid and assistance under Article 42(7) TEU

Although it creates a legal obligation for the Member States to provide “aid and assistance by all the means in their power” to the attacked Member State, Article 42(7) TEU does not define the nature of this aid and assistance. This leaves a certain amount of discretion. The attacked Member State is responsible for communicating the type of assistance it would require in the given situation. The aid and assistance can be military or civilian, but it should be meaningful and respond to the requirements specified by the attacked Member State.

The Article furthermore states that the obligation to provide aid and assistance must be consistent with commitments under NATO, for those Member States who are also NATO Allies, and that it should not be contrary to the specific character of Member States’ security and defence policy.

Understanding of ‘Territory’

Although Greenland, as part of the Kingdom of Denmark, has been a NATO member since 1949, its relationship with the EU is of a different character. While Denmark is an EU Member State, its two

autonomous territories – Greenland and the Faroe Islands – hold distinct statuses: Greenland is classified as an ‘overseas country and territory’ (OCT), and the Faroe Islands as a ‘third country’.

Greenland maintained formal ties with the EU from Denmark’s accession in 1973 but transitioned to OCT status in 1985. Consequently, the legal relationship between the EU and Greenland is complex, reflecting a shift from full integration within a Member State to a looser, associated status with more limited obligations and rights.

For the mutual assistance clause to be triggered, a Member State must be the victim of armed aggression ‘on its territory’. However, the provision offers no further clarification regarding the geographical scope of this term. This raises the question of whether Greenland, as an overseas country and territory (OCT), should be considered part of a Member State’s ‘territory’ for the purposes of Article 42(7) TEU.

In simplified terms, OCTs are associated with the EU but are not, in a strict legal sense, part of it; EU law generally does not apply to them, except in limited areas. Nonetheless, foreign, security, and defence policy matters typically remain under the jurisdiction of the EU Member State with which the OCT is associated. This is also the case, in principle, for Greenland in relation to Denmark. Moreover, Greenland is subject to the same constitutional framework of the Kingdom of Denmark as Denmark and the Faroe Islands.

The literature reveals a certain degree of uncertainty. Fazio argues that ambiguity prevails, suggesting that Denmark may not be able to invoke Article 42(7) in the event of an attack on Greenland by a NATO ally such as the U.S., given Greenland’s status as an OCT.

In contrast, Perot contends that the clause’s territorial scope is implicitly anchored in how Member States define their own territory. He argues that the clause may be interpreted to extend beyond the European continent to include non-European territories of Member States. According to this view, the fact that EU treaties do not generally apply to OCTs does not necessarily preclude the application of Article 42(7) TEU in such territories.

If correct, this would mean that armed aggression occurring in an OCT could still trigger the mutual assistance obligation.

Kochenov and Geursen take an even firmer stance, asserting that a literal reading of Article 42(7) supports the inclusion of OCTs within its territorial scope. They argue that this is reinforced by the fact that OCTs are integral parts of their respective Member States, and that the obligation of mutual assistance applies to the Member State as a whole.

Summary

Despite ongoing interpretative uncertainties, it is likely that Greenland falls within the understanding of the ‘territory’ of the EU Member State of Denmark. Accordingly, at least in principle, an OCT such as Greenland – although geographically situated outside Europe – should be considered within the scope of Article 42(7) TEU. Given the nature of the provision, it would then be the responsibility of the Danish government, in coordination with the Greenlandic government, to invoke the clause and ensure that assistance is provided to the relevant parts of the Kingdom in the event of armed aggression.

References

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