



**COUNCIL OF
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NOTE

From: Presidency
To: CATS

Subject: Solidarity Clause – the way ahead?
- Orientation debate on Art. 222 TFEU

I. General remarks

The Solidarity Clause established by Art. 222 TFEU commits the European Union and its Member States to act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster.

According to Art. 222 TFEU, the Union mobilises all the instruments at its disposal, including the military resources made available by the Member States, to prevent the terrorist threat in the territory of the Member States, to protect democratic institutions and the civilian population from any terrorist attack and assist a Member State, at its request, in the event of a natural or man-made disaster. The Member State concerned, at the request of its political authorities, is assisted by the other Member States. To that end, the Member States coordinate between themselves in the Council.

In Declaration 37 on the Treaty the Member States have clarified that without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of a natural or man-made disaster, none of the provisions of Article 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

As far as the assistance of the EU is concerned, the arrangements for the implementation of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy.

The PSC and COSI assist the Council for these purposes. If necessary, the PSC and COSI can submit joint opinions. Furthermore, Article 222 TFEU provides for the European Council to regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

While the proposal for the implementation of Art. 222 TFEU is expected in the beginning of 2012, the Member States (represented in CATS and COSI), waiting for steps to be taken by appropriate institutions in accordance with Art. 222 TFEU, should have the opportunity to discuss relevant aspects of future cooperation in the framework of the Solidarity Clause, with the aim of increasing their common understanding and possibly determining main lines of future cooperation in this regard.

II. Justification for the discussion

There are two reasons, in particular, why the relevant ministries of the Member States represented in the CATS committee (mainly Interior) may reflect on these and other questions relating to the Solidarity Clause:

- 1) As regards concrete action to be taken in a spirit of solidarity in accordance with Art. 222 TFEU, the Ministries of the Interior are primarily concerned since they are responsible for measures and have the resources for fighting against terrorism and disaster management.

- 2) A ‘solidarity case’ might occur at any time, so there is the need for prompt action to make the Solidarity Clause fully applicable.

Therefore, the Presidency believes that this is the right time for a broad-based discussion on the future implementation of the Solidarity Clause.

III. Aim of the discussion

The main objective of the Presidency at the CATS meeting of 6 October 2011 is to organise an exchange of opinions with regard to Article 222 TFEU that will allow for identification of the most important areas and directions that could be taken on board during further work from the legal point of view, especially taking into account the fact that relevant changes within the national legal systems of the Member States may be needed.

The Presidency believes that the outcome of such a discussion will be relevant and useful for further work on the joint proposal for implementation of the Solidarity Clause.

IV. Questions to be addressed

In this perspective, the Presidency has prepared the following questions for the delegations, which are aimed at streamlining the debate during the forthcoming CATS meeting.

The first question is of a general and “horizontal” character:

1. What are the most important general concerns or assessments of the MSs as regards the Solidarity Clause? The Presidency would appreciate it if any answer to this question by the delegations addressed three major perspectives if possible:

- understanding of the provisions of the article,
- the scope of the future regulation (i.e. comprehensive vs. key aspects approach),

- the role of the EU, its institutions and the Member States in applying this article, with the coordination role of the Council.

The remaining, following and supportive questions are not exhaustive but deal with chosen aspects that may also be raised whilst discussing this issue:

2. How to assess that a Member State is “the object of a terrorist attack or the victim of a natural or man-made disaster”? Should the assessment be made by the Member State concerned or by other means?
3. In which specific cases of Member States being “the object or victim” of an attack or a disaster should the obligation of solidarity apply? Could the concept of “being the object of an attack” be applied to preventive actions, before a terrorist attack has actually taken place?
4. Therefore, could a definition be adopted that would cover cases in which the Solidarity Clause could be applied and which would prevent its application to minor events? Or perhaps an *ad hoc* assessment should be made?
5. The Solidarity Clause underlines that its territorial application is limited to the territory of the Member State concerned. However, would it also apply if another EU Member State or a third country is the object of a terrorist attack by which the Member State invoking the Clause feels concerned as well?
6. Finally, how do the Member States consider that the regular threat assessment would be carried out by the European Council?

In the debate, delegations are requested to address question 1 and any other question from the above list as well as to raise any other issue that they deem appropriate.