

**Parliament of Romania**

**Chamber of Deputies** No 1/2140/VZ

13 June 2013

**OPINION**

**on the substance of the Joint Proposal for a Council Decision on the arrangements for the implementation by the Union of the Solidarity clause - JOIN(2012) 39**

Having regard to the Treaty of Lisbon and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, as republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Having regard to the information sheet drawn up by the EU Law Directorate of the Chamber of Deputies,

Having regard to the point of view of the Romanian Government expressed in the Ministry of Foreign Affairs' letter of 8 February 2013,

Having regard to the final draft opinion adopted by the Committee for European Affairs at its meeting of 5 June 2013,

Having regard to the approval given by the Permanent Bureau of the Chamber of Deputies on 10 June 2013,

The Chamber of Deputies, acting in accordance with Article 40 of Decision No 11/2011 of the Chamber of Deputies of 27 April 2011, hereby adopts this opinion:

1. The Chamber of Deputies appreciates the innovative character of the solidarity clause as a mechanism allowing for a Union-level response in exceptional circumstances only, when the Member States' capacity to respond is insufficient;
2. The Chamber of Deputies realises that in the absence of certain important details, the proposal for a decision could be categorised as a simple 'political declaration of intent', but is also aware that it is difficult to establish rules in this field when some Member States are constantly expressing their reticence with regard to the principle of solidarity in its many forms, even though it is this principle that forms the cornerstone for the Union itself; however, given the range of the tools and mechanisms and the sensitive nature of certain areas, such as the prevention and combating of terrorism, the proposal for a decision should at a later stage be supplemented based on the conclusions of simulations organised by the European Commission or the Secretariat-General of the Council using a set of scenarios considering different types of crisis; there is also a need for more

detailed information on the types of critical infrastructure under Member State jurisdiction covered by the draft decision, as well as more detailed information on the types of crisis situations;

3. The Chamber of Deputies considers that Declaration 37 on Article 222 TFEU, which states 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 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', should be sufficient to eliminate any potential concerns about the risk of surrendering too much sovereignty. The proposal for a decision can be said to be consistent with Declaration 37 as the solidarity clause does not introduce a legal obligation for Member States. How they participate in operations remains a decision for the sovereign Member States, with the activation of the solidarity clause serving as a last resort when all other EU mechanisms have proved insufficient to respond to a crisis.

4. The Chamber of Deputies welcomes the remark in recital 24 of the Paşcu Report (2012/2223(INI)) to the effect that the implementation of the solidarity clause should form an integral part of a permanent EU crisis response system, building on the existing sectoral instruments and capabilities and providing for their effective mobilisation, and should not lead to the creation of ad hoc tools;

5. The Chamber of Deputies notes that the Union and the Member States have a wide range of tools at their disposal to cope with exceptional circumstances, in a spirit of solidarity. The aim of the solidarity clause is not to replace any of these tools, but to provide a comprehensive framework to respond to extraordinary threats or damage, especially when the response requires high-level political coordination. The Chamber of Deputies also welcomes the Commission's efforts to make the most of the synergy between the existing tools;

6. The Chamber of Deputies recalls the possibilities offered by the Lisbon Treaty for enhanced cooperation within the CSFP, including entrusting specific missions and tasks to groups of states, and also the concept of permanent structured military cooperation, but notes that the current proposal does not contain any provision on the granting of military assistance in addition to that already provided for by the civil protection mechanism, and that the intention is for a separate proposal to be presented by the High Representative;

7. The Chamber of Deputies recognises that the aspects covered by the proposal for a joint decision, namely the definition of the geographic scope, the activation mechanism, the response arrangements at Union level, the integrated evaluation of threats and risks at Union level, etc. are of real utility.

8. Attacks in cyberspace, pandemics and energy crises may lead to the solidarity clause being activated, since they have a pronounced cross-border character and the potential to exceed the capacities of any individual Member State<sup>1</sup>;

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<sup>1</sup> According to recital 13 of the Paşcu Report (2012/2223(INI)), even non-armed attacks, for instance cyber-attacks against critical infrastructure, that are launched with the aim of causing severe damage and disruption to a Member State and are identified as coming from an external entity could qualify for being covered by the clause, if the Member State's security is significantly threatened by its consequences.

9. The Chamber of Deputies considers that the organisation proposed, particularly the elements mentioned below, could initially be sufficient to achieve the proposed aim:

- most of the relevant structures are in the Commission or in EU decentralised agencies;
- the most relevant EU response centre for each crisis will constitute the hub and the interface with Member States, supported by the full spectrum of specialised services;
- the establishment of the Situation Room within the European External Action Service, and the existence of several sector-specific monitoring centres within the relevant Commission departments and EU bodies;
- the transformation of the monitoring and information centre into a European emergency response centre, constituting one of the key elements of an interconnected EU rapid response system;
- the establishment of the Emergency Response Centre, which will ensure 24/7 operational capacity and serve Member States and the Commission, and the possibility for the Centre to be substituted as the designated operational hub and main point of contact depending on the nature of the crisis;
- the involvement of the European External Action Service, including in special operations involving intelligence gathering or military expertise in crises with an external dimension.

10. The Chamber of Deputies recommends that the decision be supplemented at a later stage by provisions on the Member States' response arrangements/mechanisms, the obligation for all Member States to respond, reaction times, situations in which the other Member States are not able to respond to the type of assistance requested, the method of interaction between the EU institutions involved, the Member States offering assistance and the Member State/s affected;

11. The Chamber of Deputies invites the Commission and the High Representative to clarify the role and room for manoeuvre of the European External Action Service structure with military and intelligence competence, and also the EEAS' role after activation of the solidarity clause;

12. The European External Action Service should, among its other tasks, assess the limits of foreign policy in relation to third countries (risk of destabilisation of regional/global security) in the event that the clause is activated and propose measures to reduce this risk;

13. Member States should develop their own security and response capabilities in the event of a disaster to an acceptable level irrespective of their economic strength, so that we avoid situations where they are unable to offer support to more economically advanced states that require their assistance; such behaviour would be in breach of the principle of loyal cooperation and the principle of solidarity itself;

14. The current proposal for a decision does not cover scenarios in which a crisis situation affects several states or in which the clause is activated several times within a particular time frame;

15. The high level political request to activate the implementation arrangements of the clause should be defined and geared in such a way that it includes reference to the fundamental law and constitutional practice of the Member State, but without excluding reference to the provisions of the Treaties underlying the European Union;

16. There is a need for clarification of the limits on action under the clause, in terms of the geographical scope, financial, human and logistical resources and operations. The Chamber of Deputies encourages the Commission and the High Representative to order an assessment of this issue and to propose a 'last resort' mechanism for cases in which the implementing arrangements of the clause are insufficient and cannot be covered in time;

17. The Chamber of Deputies notes that the scenario where, following an attack or major disaster, the authorities of a Member State are unable to submit a request for activation of the clause pursuant to Article 4 is not covered by the proposal.

18. Since it is possible that in the event of a disaster or major terrorist attack the EU and Member States may not be able to take action as laid down in the proposal for a decision, we recommend that provision be made for a new module that would include a 'failure mode' of political coordination at Council level, namely a means of establishing criteria to prioritise actions and use the resources of a state or group of Member States in order to cover large-scale crises;

19. As recent history has recorded instances where information errors had serious consequences, there needs to be clarification of the circumstances in which the clause would be activated before an imminent terrorist attack, and of the implications of such activation, so that large-scale rapid response arrangements are not put into action for no reason;

20. There needs to be clarification of how to determine, once the clause has been activated and the arrangements put into action, that the grounds for triggering activation of the clause have ceased or that the risks have subsided and that it is therefore necessary to halt or reconfigure operations:

21. Given that risk prevention is always preferable to prompt and effective crisis response, the Chamber of Deputies regrets that the prevention of radicalisation plays a limited role in anti-terrorism actions and is based around tools intended to target moderates, such as awareness, education and cultural actions. There is a need for innovative action that would unblock or redirect certain social processes and even individual psychological processes by making them function within parameters that are representative of tolerant cultures and Union values;

22. The Chamber of Deputies considers that any measure to coordinate and unify efforts at European level to prevent or minimise the effects of a terrorist attack represents in itself a means of discouraging terrorist actions and, as a consequence, of preventing radicalisation;

23. Although the proposal does not cover military action, the Chamber of Deputies considers that the inherent right to individual or collective self-defence should be mentioned in the proposal, alongside reference to the means of exercising this right in line with the current proposal for a decision. It should also be noted that the use of military resources in support of civil protection operations is already possible at operational level, without activating the solidarity clause. Simply mentioning the possibility of a separate initiative by the High Representative that would ensure additional military assistance does not make this clear.

24. In the view of the Chamber of Deputies, the definition<sup>2</sup> of disaster in Article 3(d) is too general and includes situations that do not constitute a significant risk while excluding situations which,

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<sup>2</sup> 'disaster: any situation, which has or may have an adverse impact on people, the environment or property;'

although they are not tangible or with immediate effect, are extremely dangerous for society in the medium and long term (for example: the poor performance of the education system, the health system, the social protection system or employment protection system);

25. The Chamber of Deputies notes there is a discrepancy between the definition of crisis, which is more robust, and the definition of disaster, which is more lax;

26. In Recital 11 of the European Parliament Resolution on the European Union Solidarity Fund, implementation and application - (2012/2075(INI)), the author wonders whether a clearer and more precise definition of the concept of disasters might help to reduce the scepticism felt by many of the Member States that are opposed to in-depth reform of this EU instrument;

27. In accordance with the principle of saving resources, the Chamber of Deputies agrees with the proposal in the European Parliament Resolution 'EU mutual defence and solidarity clauses: political and operational dimensions (2012/2223(INI)), that in the case of high-cost assets, in particular those for lower-probability risks, it makes sound economic sense for Member States to identify solutions for the common investment in and joint development of such necessary tools;

28. The Chamber of Deputies stresses the importance of ensuring that solidarity is supported by suitable financing mechanisms at EU level that offer a sufficient level of flexibility in emergencies. The Chamber of Deputies would recommend in this respect that the means of financing operations carried out upon activation of the solidarity clause be more clearly defined in advance, because in a real-life situation it is difficult to imagine that the reallocation of EU or national funds would be effective when other sectoral EU funds are overwhelmed by the scale of a particular event;

29. The Solidarity Fund should be improved in terms of the operation, effectiveness and rapidity of the administrative procedures needed to mobilise the fund;

30. Extending the scope of the Solidarity Fund and the eligibility criteria would risk watering down the aim of the fund and cause the duplication of actions;

31. The Chamber of Deputies hopes that although the Union's implementation arrangements for the solidarity clause lie within the sphere of inter-governmental relations, in which the Member States maintain their powers in relation to the Union, the object and finality of the clause should be to facilitate convergence of the options of the Member States or, where relevant, acceptance of the measures promoted by the European Commission and the High Representative or of best practices in a state or group of Member States; on this of all subjects, it would be a contradiction in terms for Member States to adopt intransigent positions;

32. The Chamber of Deputies considers that examples of success in the application of the solidarity clause could serve to bring the Union closer to citizens, by offering concrete proof of the advantages of joint action at Union level.

This opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission and to the Romanian Government.

PRESIDENT

Valeriu Stefan Zgonea