

Filling a Buzzword with Life: The Implementation of the Solidarity Clause in Article 222 TFEU

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The principle of solidarity has informed the whole European integration process but with the Treaty of Lisbon, this concept has become centre-stage. A number of provisions within the European Union (EU) treaties refer directly or indirectly to this concept. It has, however, also to be remarked that in the past solidarity has often meant different things to different people and the financial crisis which was accompanied by loud cries for and against solidarity has again given proof to this fact. In Article 222 TFEU (Treaty on the Functioning of the European Union) a broad provision on solidarity is to be found: 'The Union and its Member States shall 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.' Although not addressing solidarity in an all-encompassing way it refers to important fields of solidarity action. By the Decision of 24 June 2014 the main aspects of this Solidarity Clause were implemented. Although the Union has chosen a prudent approach it will be shown that this approach was the most appropriate one to make solidarity manageable. Within the present attempts to keep the Economic and Monetary Union (EMU) on track, important insights can be obtained from this discussion.

1 INTRODUCTION

It is surprising to see how often the EU treaties refer – directly or indirectly – to the concept of solidarity and how little agreement exists in literature and practice about its effective meaning. The widely diverging interpretations of this concept have as a consequence that solidarity, depending on the perspective taken, is either attributed the role of an important engine for the further development of EU law or as a threat for this legal order's survival.

Although not being a general norm on solidarity, Article 222 TFEU is the most-detailed provision on this concept. By Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause, several aspects of this provision have been clarified. This seems to be the appropriate moment for a general stock-taking on the relevance and the content

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of the principle of solidarity within EU law. It will be shown that the EU has taken a most pragmatic, for not to say prudent, approach when trying to further clarify this concept. In the end, this may have been a clever move.

In a time when the European Union (EU) is struggling to overcome the financial crisis and to keep the Economic and Monetary Union (EMU) working hard, decisions have to be taken that squarely involve issues of solidarity. These decisions have proved to be extremely contentious. It is argued here that the present attempts to further clarify the concept of solidarity may be of invaluable help in the thorny discussion about the need and the limits of economic help and assistance for weaker members of the EU.

2 SOLIDARITY IN EU LAW

As is well known, the principle of solidarity stood at the roots of European integration. On 9 May 1950, one of the fathers of the European integration movement, Robert Schuman, stated the following: 'Europe ne se fera pas d'un coup ni dans une construction d'ensemble: elle se fera pour des realisation concrètes, créant d'abord une solidarité de fait.'¹ Generally, this document is considered to be a pivotal inspirational source for the whole subsequent European integration process.

Already the preamble of the EEC Treaty of 1957 referred to the principle of solidarity, then in a diction very much resembling international law rhetoric and addressing the now all but defunct relationship between EC countries and overseas territories:

INTENDING to confirm the solidarity which binds Europe and overseas countries, and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

Now, in the preamble of the Treaty of European Union, in a political setting where the respect for the multicultural European reality appears to be crucial for the further success of European integration, the Governments of the EU MS express the desire 'to deepen the solidarity between their peoples while respecting their history, their culture and their traditions'. Many other provisions of the EU Treaties presently in force refer directly or indirectly to the principle of solidarity:

- According to Article 5.3 paragraph 3 TEU the promotion of solidarity is one of the aims of European Union.

¹ For the text see <http://www.robert-schuman.eu/fr/declaration-du-9-mai-1950> (accessed, 14 Sep. 2014).

- Article 21.1 TEU qualifies solidarity as one of the principles that have inspired the Union's creation, development and enlargement, which it seeks to advance in the wider world.
- Article 42.7 contains a far-reaching solidarity obligation by the MS in case of an armed attack without, however, mentioning the term 'solidarity'.
- In Title V of the TFEU, the first Article (67) calls upon the Union to 'constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.'² It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals'.
- According to Article 80 TFEU the policies of the Union set out in the Chapter on border checks, asylum and immigration shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the MS.
- The solidarity obligation contained in Article 122.1 TFEU has gained broad notoriety in the wake of the financial crisis: According to this provision the EU may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.
- Finally, Article 194.1 requires solidarity between MS in the Union policy on energy.³

It is puzzling to see that notwithstanding all these references to solidarity the EU Treaties do not contain any definition of this term. While Article 222 is the only Article in the Treaties entirely dedicated to solidarity and provides the most detail about this concept, it is neither suited to serve as the sole or the primary reference point for a definition of this concept. This provision deals rather with a segment of solidarity, albeit a rather important one. It is therefore not possible to derive a core meaning of solidarity directly from this article. It is possible, however, to identify in this norm some essential traits of this concept that, if added to elements from other provisions on solidarity, can contribute decisively to develop a broader picture. It will furthermore be shown that the philosophy underlying

² Articles 67.2 and 67.3 TFEU.

³ See also, R. Bieber & F. Maiani, *Ohne Solidarität keine Europäische Union: Über Krisenerscheinungen in der Wirtschafts- und Währungsunion und im Europäischen Asylsystem*, in: *Schweizerisches Jahrbuch für Europarecht* 2011/2012, pp. 297–327.

Article 222 as well as that of the implementation decision of June 2014 can be of enormous value for the further development of the solidarity principle.

3 A FIRST ATTEMPT TO DEFINE SOLIDARITY

As shown, the concept of solidarity has a long history within the EU legal order and it stands to reason that the meaning of this concept developed in step with EU law as a whole. While it will therefore not be possible to conceive a definition that will fully do justice to all meanings attributed to solidarity at any moment over the last half a century, it is argued here that some basic traits of solidarity have remained immutable. Some historic considerations about this normative development process will not only help us to better understand the present normative situation but also to identify at least a rudimentary trajectory alongside which the solidarity principle will develop also in the future.⁴ The historic continuity of central elements of this principle comes also to bear in Article 21.1 TEU which qualifies solidarity as one of the principles that have inspired the Union's creation, development and enlargement, and which it seeks to advance in the wider world. This provision therefore opines that there is a clear line of connection between past, present and future in the evolution of this concept. Unfortunately, no hint is given about the actual meaning of this concept but the emphasis on continuity allows one to refer to past practice and understanding for present-day interpretation of solidarity and to make considerations about possible future developments of this principle.

Solidarity has been qualified as a constitutional principle or a general principle of law that permeates the whole legal order of the European Union.⁵ Especially after the entry into force of the Treaty of Lisbon and the extensive discussion about the nature of solidarity in the wake of the financial crisis, the paramount importance of this principle within the EU legal order can no longer be contested. If the specific meaning of this principle is looked for and with the EU law giving no explicit answer to this question, the interpreter may refer to general legal theory for further clarification. There, an important distinction is to be found: Contrary to what common language use seems to suggest, solidarity is not to be equalled with altruism. Solidarity is based on the principle of reciprocity:

⁴ This seems to be justified even if Friedrich Nietzsche was of the opinion that concepts mirroring a whole semiotic process would be unsuited for definition; according to him only those concepts that had no history were definable. See F. Nietzsche, *Zur Genealogie der Moral*, p. 62: 'alle Begriffe, in denen sich ein ganzer Prozeß semiotisch zusammenfaßt, entziehen sich der Definition; definierbar ist nur Das, was keine Geschichte hat'.

⁵ See, R. Bieber, *Gegenseitige Verantwortung – Grundlage des Verfassungsprinzips der Solidarität in der Europäischen Union*, in: Ch. Calliess (ed.), *Europäische Solidarität und nationale Identität*, Mohr Siebeck: Tübingen 2013, pp. 67–82 with further references.

‘Solidarity expects solidarity’.⁶ This *do ut des* mechanism underlying solidarity may not be immediately visible but in the long run and in a broader context all forms of aid and assistance are in some form expected to be repaid. This mutuality that comes here to bear often resembles an insurance: In advance it is not possible to know who will be the ultimate beneficiary of the grants awarded to the needy and it is even possible that a subject is paying insurance premiums for a long time and never gets back anything. On the other hand, already the insurance coverage and the security it awards are to be seen as material benefits. Solidarity instruments are typically needed in high-risk situation where the individual actor is standing before a ‘veil of ignorance’ as it was depicted by John Rawls:⁷ If what was before a risk becomes reality this situation may be difficult to shoulder for the individual but the community as a whole can easily bear it if all individuals cooperate: ‘L’Union fait la force’. Therefore, in principle, solidarity is different from altruism. Altruism does not expect anything in return for charity given. The sense of having helped is in itself reward and gratification for the benefactor. It stands to reason that such unilateral help, primarily characterized by altruism may be sustainable only in very limited circumstances, which are usually characterized by strong personal ties between the subjects involved and by a foreseeable, limited amount of resources needed. Altruism can hardly be given a legal cloth; any legal regulation might contrast the very motivation driving people to show altruism. It is therefore small wonder that in legal relations, be they national or international, solidarity is primarily based on reciprocity and not on altruism. This holds also true for EU law where several ‘hotspots’ of solidarity can be devised (such as the provisions on asylum and refugee law, several and pivotal elements of EMU, Union citizenship⁸ as well as the whole system of development cooperation).⁹ There can be no doubt that in all of these areas also some altruistic elements can be retraced and in some fields they can also be of considerable weight. This fact only underscores that the Union has become a social reality with considerable cohesiveness that resembles to a certain extent a ‘community of destiny’ as we find it with nation states where the

⁶ See, J. Isensee, Solidarität – sozialethische Substanz eines Blankettbegriffs, in: J. Isensee (ed.), *Solidarität in Knappheit: zum Problem der Priorität*, Duncker & Humblot: Berlin 1998, pp. 97–141.

⁷ See, J. Rawls, *A Theory of Justice* (Harvard U. Press 1971 rev. 1975).

⁸ See, for more detail P. Hilpold, Nichtdiskriminierung und Unionsbürgerschaft, in: M. Niedobitek (ed.), *Europarecht – Politiken der Union*, Walter de Gruyter: Berlin/Boston 2014, pp. 1–96. See also, I. Domurath, *The Three Dimensions of Solidarity in the EU Legal Order: Limits of the Judicial and Legal Approach*, in: ‘European Citizenship is in Itself a Mirror of Solidarity’ 35 *Eur. Integration* 459–475, 462 (2013).

⁹ These ‘hotspots’ or ‘Islands’ of solidarity within EU have been analysed in detail by this author in ‘Understanding solidarity properly: the challenge of EMU’ (forthcoming). For the image of the ‘islands of solidarity’ see K. Wellens, *Solidarity as a Constitutional Principle: Its Expanding Role and Inherent Limitations*, in *Towards World Constitutionalism* 775–780 (R.St.J. Macdonald & D.M. Johnston eds., 2005). See also, P. Hilpold, Solidarität als Prinzip des Staatengemeinschaftsrechts, in: 51 *AVR* 2013, pp. 239–272.

common well-being is a value as such and where altruism becomes therefore an important motivational factor for the re-distribution of resources according to the effective needs. At the same time, however, it is also to be emphasized that nowhere within EU law have the altruistic elements become preponderant. With other words: Nowhere do we find norms that foresee a unilateral and unlimited flow of resources in the exclusive interest of the recipient. It is rather the case that each provision on solidarity within EU law is to be seen as part of a broader regulation of interests from which the Union and (some or all of) its Members benefit in an immediate or at least an indirect way.¹⁰ Misunderstandings about the nature of solidarity within EU law (and in law in general) have also been at the roots of an acerbated diatribe with regard to the rescue measures financed (or sponsored) by the EU in the wake of the international financial crisis. It has never been the intent by the Union to introduce by these measures a continuous flow of resources from richer countries to the worse-off nor to start a re-distribution of wealth within the Union. Nonetheless, the Union decided to provide help in order to overcome an acute crisis and this happened in the interest of all parties involved and therefore also in that of the Union itself. Reciprocity was therefore guaranteed already in an economic sense and the additional element of conditionality gave reciprocity also a clear legal underpinning. The beneficiary of EU financial assistance has to commit to readjustment measures that bring its economy back to the path of stability and which would fend off the systemic financial risk from the Union. It was the European Court of Justice (ECJ) which in practice read the conditionality requisite into Article 125 TFEU¹¹ but thereby it was made clear that also within this most critical area of EU law solidarity was based on reciprocity. In the end, the ECJ took a very pragmatic stance. The no-bailout clause of Article 125 TFEU was to be read with critical distance and with both the needs of the Union and its MS in the eye. This clause has surely a strong justification as it serves to rule out free-riding by MS and a behaviour that could jeopardize the very existence of EMU.

As will be shown, such pragmatism has inspired the EU also when it came to implement Article 222 TFEU.

¹⁰ See, P. Hilpold, *Understanding solidarity properly: the challenge of EMU*, (forthcoming).

¹¹ See, B. de Witte & Th. Beukers, *Case Note to 'Pringle'*, 50 CMLR 805–848, 838ss (2013). See also, the Opinion by GA Juliane Kokott who very well explained in the Case C-370/12, Thomas Pringle that absolute rigour in this field could come at an unsustainable price. In fact, solidarity would be fully excluded if MS were prohibited from providing any financial support to other MS, a prohibition that might even imply the need of a total exclusion of trade and commerce between MS.

4 THE CONTENT OF ARTICLE 222 TFEU

4.1 GENERAL REMARKS

As already mentioned, the situations regulated in Article 222 TFEU are by far not coextensive with the core meaning of solidarity as a general principle in EU law but they nonetheless cover an important part of it.

Article 222 refers to three threats to the MS that have proved to be of an extraordinary weight and dimension: terrorist attacks and natural or man-made disasters. Reference is here made alone to the MS but it is clear that these situations constitute also a threat to the Union as a whole. This is further evidenced not only by the introductory clause according to which '[t]he Union and its Member States shall act jointly in a spirit of solidarity' but also by the fact that the Union plays the central role in this struggle once the aggrieved MS have demonstrated not to be able to get control of it on their own.

As will be shown, this provision is rather vaguely worded and its material application generates a series of practical problems that have only partly been overcome by the Council decision of 24 June implementing Article 222.

Some considerations about the historical circumstances that refer to the creation of this norm may furnish elements that can elucidate to some extent the meaning of the norm.

4.2 THE COMING INTO BEING OF THE SOLIDARITY CLAUSE AND THE INTERRELATION WITH ARTICLE 42.7 TEU

The solidarity clause as it was formulated in Article 222 can best be understood as the product of historically extraordinary challenges to the EU and its MS. First of all, the terrorist attacks of 11 September 2001 and the ensuing world-wide war on terror have to be mentioned. Challenges to internal and external security, which were strictly separated in the past, seemed to intermingle.¹²

The solidarity clause should become part of the European Constitution. During the European Convention (2002–2003) agreement was found to enact a broad solidarity system that should provide for mutual assistance against a series of threats. It soon became clear that the security issue was too complex to be addressed in one single norm. There was the 'mutual assistance' or 'mutual defence' clause providing assistance against an 'armed aggression' and therefore a classical

¹² Best expression is given to this fact by SC Res. 1368 (2001) which recognized 'the inherent right of individual or collective self-defence in accordance with the Charter' and by SC Res 1373 (2001) which reaffirmed the inherent right of individual or collective self-defence as recognized by the Charter of the UN as reiterated in resolution 1368 (2001).

military attack. This provision should afterwards become Article 42.7 TEU. And there was a second clause against a set of more diffuse challenges and threats that went beyond the individual Member State's capability to react appropriately. This provision should later become Article 222 TFEU. The exact wording of the two clauses was very much influenced by contemporaneous events and by the need to take regard of specific situations within single MS. Thus, concerning Article 222, the 2004 terrorist attack in Madrid had a decisive influence on the final drafting of this provision which became primarily an anti-terrorist provision.¹³ In the same years, Europe was also hit hard by flooding and atmospheric catastrophes (especially in Central Europe).¹⁴

That could be tackled only by a common, solidary action. As will be shown below the addition of these elements was important also on political grounds to make the norm as a whole more easily acceptable in a political environment that after the much contested Iraq intervention of 2003 had become suspicious against all sorts of rallying cries. Thus, Article 222 TFEU was thereby, in this extended form, somewhat softened.

According to Article 42.7, first sentence, TEU, '[i]f 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 formulation closely resembles that of a classical defence pact and the fact that shortly after the entry into force of the Lisbon Treaty, on 31 March 2010, the Brussels Treaty of 1954, creating the WEU, was terminated is telling.¹⁵ De facto, Article 42.7 TEU replaced Article V of the WEU Treaty, according to which '[i]f any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.'¹⁶

This mutual defence clause was somewhat weakened by the second sentence in Article 42.7 TEU, according to which these obligations 'shall not prejudice the specific character of the security and defence policy of certain Member States'. Regard was taken here of the position of some MS (in particular Ireland and

¹³ See, S. Blockmans, *L'Union fait la Force: Making the Most of the Solidarity Clause (Art. 222 TFEU)*, in *EU Management of Global Emergencies* 111–135, 113 (I. Govaere & S. Poli eds, Brill: Leiden 2014) referring to Arts I-43 and III-329 of the Treaty establishing a Constitution for Europe, OJ, 2004, C 310.

¹⁴ This happened in particular in the year 2002 and it was in this year that reference to natural disaster entered definitely into the formulation of the provision that later became Art. 222 TFEU. See, D. Thym, Commentary to Art. 222 TFEU, in: Grabitz/Hilf/Nettesheim, *EUV/AEUV-Kommentar*, 2011, para. 19.

¹⁵ *Ibid.* at 113. See also, P. Hilpold, *Solidarität und Neutralität im Vertrag von Lissabon*, Nomos: Baden-Baden 2010.

¹⁶ *Ibid.* at 49.

Austria) as neutral states. In the following paragraph an additional safeguard was introduced in respect to obligations of some EU MS as NATO partners.¹⁷ What these exceptions imply in detail is still open to debate.¹⁸ In particular, we are confronted here with exceptions that run counter to the reciprocity principle as some EU MS are exempted, totally or in part, from active contributions to this defence pact while they arguably can take advantage from it. At the same time, however, it can well be sustained that these exceptions do not undermine the reciprocity principle in the area of mutual defence as such. In fact, it is not only the case that some assistance, which the neutral EU MS retain compatible with their specific obligations, will still be possible but it has also to be kept in mind that these exceptions allowed for the conclusion of an assistance pact that otherwise would most probably not have been possible. Article 42.7 TEU can therefore be seen as another example of a pragmatic application of the solidarity principle within EU law.

The field of application of Article 222 TFEU is a different one although there are interrelations between these provisions, especially because Article 222 also implies the employment of military resources made available by the MS. As a rule of principle it can be stated that on the basis of Article 222 military resources may not be used for measures of conventional self-defence. As will be shown below, the use of military means in case of extended natural disasters come to mind but also armed threats below of an armed attack. Grey areas will here persist, in particular if regard is taken of modern forms of terrorist warfare. It is not excluded that both provisions – Article 42.7 TEU and Article 222 TFEU – apply in parallel.¹⁹ In this case it would be important to find appropriate ways for the coordination of the intergovernmental decision making that applies for Article 42.7 and the EU internal decision making foreseen in Article 222 TFEU.

4.3 THE STRUCTURE OF ARTICLE 222 TFEU

As already mentioned, Article 222 TFEU refers to three different situations affecting the security of a MS and pasted together, at first sight, in a rather haphazard way: terrorist attacks and natural or man-made disasters. It has also been mentioned that the starting point, when considerations to introduce such a norm began, was the desire to confront the issue of terrorism in a more effective way. It

¹⁷ ‘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.’

¹⁸ See, P. Hilpold, *Solidarität und Neutralität* 2010, p. 49ss.

¹⁹ For an example of such a situation Myrdal and Rhinard refer to ‘cyber attacks’. See, S. Myrdal & M. Rhinard, *The European’s Solidarity Clause: Empty Letter or Effective Tool?* UI Occasional Papers 2/2010, p. 9.

is therefore small wonder that this aspect is paramount in Article 222. It was also this element that justified the insertion of the solidarity clause at the end of Part V of the TFEU on External Action which otherwise would seem rather odd. Although it is known that terrorism can have purely (or mainly) internal reasons it is generally perceived that the main threat is originating today from international terrorism and requires therefore external action. Nonetheless, Article 222 TFEU applies both on situations of international and national terrorism. During the negotiating process on this norm its field of application was extended to natural or man-made disasters. There was surely the desire (expressed primarily by the French politician Michel Barnier) to strengthen civil protection²⁰ and many MS still suffered from major natural disasters all over Europe (in particular the flooding of rivers of 2001 and 2002) when this clause was debated at the European Convention. At the same time, this extension of the purview contributed much in softening the image of this provision and made it easier to sell on the political level. Article 222 TFEU did not become right away a norm on anti-terrorism and the EU did not seek thereby to profile itself as a spearhead against international terrorism what could have been counter-productive and tarnish the EU's image on the international level. Article 222 TFEU is not an instrument to fight against specific states or subjects. It constitutes rather the legal basis for fending off major threats from whatever source they may originate.

This position echoes also main elements of the European Security Strategy (ESS) which calls for a flexible approach with a mixture of instruments.²¹

That being said, it must, however, be admitted that the struggle against the terrorist threat is of core relevance within this norm.²² This becomes evident by the fact that only in this field is the European Union allowed to take preventive measures.

4.4 OBLIGATIONS BY THE UNION AND BY THE MS

On a whole, the duties of solidarity by the EU are far more extensive than those by single MS, even though Article 222.1 refers to an obligation by the Union and its MS to 'act jointly in a spirit of solidarity'. In fact, the first sentence of Article 222.1 sets forth an obligation by the Union to 'mobilise all the instruments at its disposal' while Article 222.2 when specifying the obligations by the MS is far more restrained. No 'best effort' obligation on the account of the MS is here to be found. But what is more, the MS were eager to further relativize the obligations

²⁰ *Ibid.* at 4.

²¹ 'Dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means.' See, 'A Secure Europe in a Better World', European Security Strategy, 12 Dec. 2003, p. 7.

²² Again, the same may be said to be true of the European Security Strategy.

flowing from this provision by the addition of declaration No. 37 which reads as follows:

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.

This provision is conspicuously unclear as to the concrete extent of the Member States' solidary obligations. The other Member States may 'choose the most appropriate means to comply with [their] own solidarity obligations'. This can, of course not be interpreted as freedom to show solidarity or not as there can be no doubt that some solidarity has to be shown.²³ On the other hand, however, the non-affected MS have enormous leeway in determining their effective solidarity contribution. There seems, therefore, to be an enormous discrepancy between the obligations of the Union (and the MS when acting jointly with the Union) and the respective obligations by the single MS when directly requested to act by an affected MS according to Article 222.2 TFEU. Such a discrepancy would be illogical from a systematic point of view, first of all in view of the fact that the non-affected MS would be subject of totally different obligations, depending on who is asking for help. As is to be shown below, when treating the decision of 24 June 2014, such a gulf between these obligations in reality does not exist as also the Union's obligations have been interpreted rather restrictively by secondary law.

Finally, it has also to be remembered that there is also an obligation of loyal cooperation according to Article 4.3 TEU that reinforces the obligations resulting from Article 222.

4.5 ARE THE SOLIDARITY OBLIGATIONS OF A PURELY INTERNAL NATURE?

Considerable criticism has been voiced in literature about the location of this norm at the end of Part V of the TFEU on External Action as the threats mentioned in Article 222 seem to refer – at first sight exclusively – to events happening on the territory of the MS and not externally. This understanding seems to flow directly from the wording of Article 222.1 ('if a Member State is the object of . . .'). If reference is made to the need to ward off 'natural or man-made disaster' thoughts will go straight away to events at home and the same is true, though perhaps to a slightly lesser extent, if acts of terrorism are concerned. The problem arises, however, that in reality, none of these threats can be circumscribed, as to its provenance, to a certain territory. This has again been made very clear

²³ An interpretation to the contrary would be in contrast with the principle of *effet utile*.

already in the ESS drafted more or less at the same time as the solidarity clause: ‘Our traditional concept of self-defence – up to and including the Cold War – was based on the threat of invasion. With the new threats, the first line of defence will often be abroad.’²⁴ These considerations in mind we could therefore state that there might be good reasons to fight natural or man-made disasters also outside the EU territory. The same holds true for anti-terrorism measures. As the EES affirms, ‘[t]he most recent wave of terrorism is global in its scope ...’.²⁵ It should therefore be possible to identify also an external dimension in Article 222 if this provision has to fully explain *effet utile* and this has led commentators to speak of a ‘hybrid nature’ of this provision.²⁶ In these cases Common Foreign and Security Policy instruments will become relevant.²⁷ Of course, with regard to measures taking effect outside the territory of the affected EU MS difficult questions might here arise as to the international law compatibility of such measures.

As will be seen, however, by the decision of 24 June 2014 regarding the implementation of the solidarity clause, a restrictive approach has been adopted in this regard that not only is apt to safeguard international law obligations by the MS but also ends up in limiting considerably the obligations by the Union in respect to what Article 222 seems to imply and permit. The question is whether the Union and its MS, when pursuing such an approach of ‘solidarity light’, can fully come up to their obligations resulting from primary law.

5 THE DECISION OF 24 JUNE 2014

5.1 GENERAL REMARKS

On 24 June 2014 the European Council has adopted a decision on the arrangements for the implementation of the solidarity clause,²⁸ implementing thereby Article 222.3, first sentence:

The arrangements for the implementation by the Union 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.²⁹

²⁴ EES, p. 7.

²⁵ *Ibid.* at 3.

²⁶ Ch. Hillion, *Fighting Terrorism Through the Common Foreign and Security Policy*, in *IEU Management of Global Emergencies 75–95*, 29 s. (Govaere/S. Poli eds., Brill 2014).

²⁷ *Ibid.*

²⁸ Council Decision of 24 Jun. 2014 on the arrangements for the implementation by the Union of the solidarity clause, O.J. L 192/53, 1 Jul. 2014.

²⁹ The Joint Proposal was presented on 21 Dec. 2012; JOIN(2012)39 final. The Explanatory Memorandum added to this Proposal contains important elements on how the European Union interprets the solidarity clause.

According to Article 222.3, second sentence, '[t]he Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications.' This signifies that in this case decision-making will not follow the ordinary procedure requiring a qualified majority but the unanimity rule. This special rule did not apply to the decision of 24 June 2014 as in this act defence implications were explicitly excluded.³⁰

This decision concentrates on essential aspects of the solidarity clause; it is not an all-encompassing implementation measure as to Article 222 TFEU. In particular, it does not deal with assistance provided directly by other MS on the basis of a coordination effort within the Council. As shown, Article 222 regulates this 'horizontal' perspective of solidarity in a rather restrictive way suggesting thereby at least indirectly that initiatives carried out by the Union directly stand at the core of the solidarity clause.

Regulation of also the implementation measures carried out by the MS directly appeared to be, first of all, less urgent as solidarity initiatives of this kind seem to be of a subsidiary nature according to Article 222 TFEU. Furthermore, the competence situation is less clear. On the one hand, Article 222.2 introduces this subject into the purview of EU law when it states that MS 'shall coordinate between themselves in the Council'. On the other hand, also without this provision the MS would be free to coordinate assistance activities in favour of another MS either inside or outside the Council, both on the basis of international law as within the Common Foreign and Security Policy (CFSP). It is not clear how these two sets of competences would interact and how it would be possible to avoid any interference with the sovereign competences of the MS. It was to be feared that the adoption of implementation measures by the Union also for this specific area would have become more of an obstacle than of a real help in crisis situations.

5.2 SCOPE OF APPLICATION

In this decision, a detailed definition of the scope of application is to be found.

According to Article 2 this decision applies:

- (a) within the territory of Member States to which the Treaties apply, meaning land area, internal waters, territorial sea and airspace;
- (b) when affecting infrastructure (as off-shore oil and gas installation) situated in the territorial sea, the exclusive economic zone or the continental shelf of a Member State.

³⁰ Article 2.2 of the Decision of 24 Jun. 2014.

Notwithstanding the fact that this Article mentions a series of elements that cannot be found in Article 222, the scope for solidarity measures is defined rather restrictively as it seems to exclude any measure outside the territory of the Union with the only exception of acts designed to protect certain kind of infrastructure (such as off-shore oil and gas installations) situated in areas with attenuated sovereign rights by the coastal state (i.e., the exclusive economic zone and the continental shelf of a MS).

This provision rightly emphasizes the fact that ‘the Union shall be bound by international law and shall not encroach upon the rights of non-Member States’ ‘[w]hen having recourse to the arrangements under this Decision, and notably when mobilizing the instruments at its disposal’.³¹ Respect for international law obligations does not, however, necessarily require the limitation of the scope of application of governmental action to the territory of the MS. Arguably, there would have been space to apply the solidarity clause also outside this area taking recourse to CFSP measures as analysed above.

5.3 THE EXTENT OF THE COMMITMENT; RESOURCES

With regard to the resources, the Union is prepared to employ for the application of the solidarity clause, a first look at Article 222 TFEU could suggest that the European Union has taken here a very extensive commitment. In fact, the Union has to ‘mobilize all the instruments at its disposal’ and this could be read as an obligation to do everything it can, maybe requiring even a reconsideration and a rebalancing of commitments in other fields if available means to combat the threat should appear to be insufficient. The decision of 24 June 2014 takes, however, a far more limited stance. In fact, the preamble of this decision states in its 4th recital as follows:

The implementation of the solidarity clause by the Union should rely on existing instruments to the extent possible, should increase effectiveness by enhancing coordination and avoiding duplication, should function on the basis of no additional resources, should provide a simple and clear interface at Union level to Member States, and should respect the competences upon each Union institution and service.

EU action in the field of solidarity measures is therefore grounded on the basic assumption that means and resources needed to fight the challenges mentioned in Article 222 TFEU are already mostly available, the foremost task being to coordinate the various instruments more effectively and to employ the available resources accordingly.

³¹ Article 2, para. 1, sentence 2 of the Decision of 24 Jun. 2014.

The 'Explanatory Memorandum' attached to the Joint Proposal of 2012³² is very clear about this subsidiary nature of EU intervention on the basis of Article 222 and with regard to the intent to avoid, as far as possible, the creation of additional structures and the need for additional resources:

Implementation arrangements for the Solidarity Clause do not replace any existing instruments or policies and the specific procedures for their activation. They provide an umbrella framework for situations of extraordinary threat or damage that overwhelm the response capacities of the affected Member State(s).³³

The decision cites as relevant instruments to be mobilized and coordinated the EU Internal Security Strategy, the EU Civil Protection Mechanism and the structures developed in the framework of the Common Security and Defence Policy (CSDP).

Arrangements for coordination in the Council should rely on the EU Integrated Political Crisis Response (IPCR) Arrangements of 25 June 2013.

As already mentioned, in Article 2.2 of the decision it is clearly stated that this act has no defence implications. This does not exclude, however, the employment of military capabilities, even 'going beyond the existing arrangements on civil protection'.³⁴ It has been suggested that such military resources could either be assets that have already been registered for use in civilian disasters or, for example, troops for crowd control or equipment for large-scale disaster clean-up.³⁵ In fact, a general tendency can be noted all over Europe to strengthen the civil employment of military resources, in particular in the field of catastrophe prevention and disaster relief. Military resources become of a 'spurious nature'.³⁶ As far as these resources are not used for defence measures in the proper sense they can be employed for solidarity measures on the basis of the decision of 24 June 2014.

On a whole it can therefore be stated that the decision of 24 June 2014 tried to limit as far as possible the financial implications resulting from the solidarity clause. As shown above, if solidarity is understood (prevailingly) in altruistic terms the financial implications can be very far-reaching. Potentially, the financial needs resulting from such an approach could be endless, the same as human needs and aspirations do not know any limit. The European Union has set a clear bar to such an understanding of solidarity. By the decision of 24 June 2014 it is made clear that the solidarity clause is to be understood pretty much the same way as general

³² JOIN(2012) 39 final.

³³ *Ibid.* at 3.

³⁴ Council decision of 24 Jun. 2014, Art. 5.3 lit b).

³⁵ So Myrdal & Rhinard (2010), p. 6.

³⁶ As is well known, in 2013 in Austria general conscription was put to a referendum voting. At the end, the proposal for an abolition of conscription was rejected. One of the main arguments of the advocates of conscription referred to the need for a larger army for civil protection (in particular with regard to natural disaster).

legal doctrine has done when developing a workable concept in this field. As a consequence it is to be said that also with reference to Article 222, solidarity is to be based on reciprocity.

The instruments and the procedures to which the decision of 24 June 2014 refers are based on this principle and the EU has tried hard to avoid that further obligations would arise for the Union. The main added value Article 222 TFEU provides, consists therefore in predisposing procedures for a better coordination of instruments and measures already available. On the basis of Article 222 also another solution would have been possible. It would have been thinkable to use this provision as a basis for earmarking further funds for solidarity measures but the Union and its MS decided otherwise. In front of a potentially incommensurable need for solidarity the Union has to make priorities and to use their means in a parsimonious and efficient way. In contrast to the rather open-textured formulation of Article 222 the decision of 24 June 2014 takes a clear – and pronouncedly restrictive – stance. This circumstance is further corroborated by Article 4 of this act on invocation of the solidarity clause. According to this provision, a MS affected by a disaster or a terrorist attack 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’. Thereby the absolutely exceptional nature of the challenge that can trigger the solidarity mechanism is again re-stated. On the basis of this wording – which is not to be found in Article 222 – the solidarity clause has only a complementary nature. As mentioned, in the Memorandum to their Joint Proposal of 2012 the European Commission and the High Representative referred in this context to an ‘umbrella framework’ that should be created.³⁷ A ‘network approach’ will be used ‘to improve efficiency and avoid duplication of structures and functions’.³⁸

5.4 TERRORIST THREAT

According to Article 222.1, lit. a) [t]he Union shall mobilize 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;
- protect democratic institutions and the civilian population from any terrorist attack;

³⁷ JOIN(2012) 39 final, p. 3.

³⁸ *Ibid.*

- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack.

As is well known, in international law, up to this moment no agreement has been found for a binding definition of terrorism although a series of proposals exist and surely a core understanding of this concept has taken shape. The decision of 24 June 2014³⁹ refers in Article 3(b) to this avail to Council Framework Decision 2002/475/JHA⁴⁰ which defines as terrorist offences the following acts:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- (h) interfering to commit any of the acts listed in (a) to (h).

If they are intentional, if they are defined as offences under national law and if they may, given their nature or context, seriously damage a country or an international organization when committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organization to perform or abstain from performing any act, or
- seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

Many of these criteria leave open much space for interpretation. If we further consider that the concept of 'terrorism' is in itself politically highly loaded it

³⁹ 2014/415/EU.

⁴⁰ Council Framework Decision 2002/475/JHA of 13 Jun. 2002 on combating terrorism (O.J. L 164, 22 Jun. 2002, p. 3).

becomes clear that after invocation of the solidarity clause by a MS, action by the EU will primarily depend upon a political assessment made by the competent EU institutions, first of all the Commission's Emergency Response Centre (ERC) as well as the High Representative for Foreign Affairs and Security Policy.

Solidary action in the field of anti-terrorism measures can also build upon the 2005 EU Counter-Terrorism Strategy⁴¹ that consists of four strands: prevent, protect, pursue and respond.⁴²

With regard to the first strand, the main aim is to prevent radicalization and recruitment leading to the willingness to commit terrorist offences. A specific aim is also that of countering terrorist use of the internet.

The second objective of the Counter-Terrorism Strategy is to protect people and critical infrastructure in energy and transport.⁴³

The third strand ('pursue') refers to information gathering and analysis, impeding terrorists' movements and activities, police and judicial cooperation and combating terrorist financing.⁴⁴

The fourth strand ('respond') 'brings together issues such as civilian response capacity to deal with the aftermath of a terrorist attack, early warning systems, crisis management in general and assistance to victims of terrorism'.⁴⁵

At first sight, the decision of 24 June 2014 does not address important elements of an effective fight against terrorism, such as prevention (which is even mentioned in Article 222 TFEU, and therefore by primary law). These elements are, however, already part of the existing EU antiterrorism strategy and therefore there was no need to mention them explicitly in the said decision. As already pointed out, this act had primarily the objective of activating and coordinating more efficiently instruments and procedures already in place.

With regard to the immediate cause that should trigger the solidarity clause the Joint Proposal of 2012 seems to adopt a very restrictive approach when it refers to 'actual or imminent terrorist attacks'. This formulation could be understood as referring to the formulae coined for the activation of the right to self-defence according to Article 51 of the Charter of the United Nations. In this context it has to be observed, however, that it is still very much disputed whether the right to self-defence according to UN law is based on a more extensive or a more restrictive approach.⁴⁶ To allow for acts of self-defence in the presence of an 'imminent' attack seems to be possible on the basis of the so-called

⁴¹ Doc. 14469/4/05 of 30 Nov. 2005.

⁴² COM(2010)386 final of 20 Jul. 2010, p. 2.

⁴³ *Ibid.* at 5.

⁴⁴ *Ibid.* at 8.

⁴⁵ *Ibid.* at 9.

⁴⁶ For this discussion see P. Hilpold, Die Vereinten Nationen und das Gewaltverbot, in: 53 Vereinte Nationen 2005, pp. 81–88, with further references.

Webster-formula⁴⁷ but less on the basis of Article 51 of the UN Charter. Be this as it may, it has to be remarked that the formulation used in the ‘Explanatory Memorandum’ to the Joint Proposal of 2012 does not seem to be appropriate: While it is too broad when it should be used to define the right to self-defence (to which the implementing decision of 24 June 2014 anyway does not refer) it is surely too restrictive if it should define the extent to which antiterrorist measures should be possible on the basis of the Solidarity Clause. As shown, the decision of 24 June 2014 introduces (additional) mechanisms of coordination applicable to a broad panoply of anti-terrorist measures having a far broader scope than that of a mere counteraction against an imminent terrorist attack. As stated, the Decision of 24 June 2014 should allow also for preventive measures even though Article 4 of this decision permits the invocation of this clause only when a ‘crisis clearly overwhelms the response capabilities available’ to the affected MS. In a situation of prevention such a crisis is not yet given but prevention should avoid the coming about of just such a threat.

5.5 NATURAL OR MAN-MADE DISASTER

The decision of 24 June 2014 defines ‘disaster’ as ‘any situation which has or may have a severe impact on people, the environment or property, including cultural heritage’. Examples are storms, floods and earthquakes.

This provision has to be read in close conjunction with Article 196 TFEU on the Civil Protection Mechanism, a supportive competence also newly introduced by the Treaty of Lisbon.⁴⁸ According to this provision, ‘[t]he Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.’

Union intervention in this field is structured very similarly as to that made possible by the solidarity clause. Thus, Article 196 TFEU provides that:

Union action shall aim to:

- (a) support and complement Member States’ action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

⁴⁷ As is well-known, in the ‘Caroline case’, the US State Secretary of Foreign Affairs declared in 1842 that a right to self-defence is (only) given if ‘the necessity of self-defence is instant, overwhelming, leaving no choice of means, and no moment for deliberation’. For many, this formula is now too broad and does not fit into UN law.

⁴⁸ See, G. Gattinara, Art. 196, in: A. Tizzano (ed.), *Trattati dell’Unione Europea*, Giuffrè: Milan 2014, pp. 1664–1679.

- (b) promote swift, effective operational cooperation within the Union between national civil-protection services;
- (c) promote consistency in international civil-protection work.

Already before the entry into force of the Treaty of Lisbon the European Community has acted in this field, emanating two decisions on the basis of Article 352 TFEU (then Article 308 TFEU: Decision 2007/162/EC on a Civil Protection Financial Instrument and Decision 2007/779/EC on Civil Protection Mechanism)/.

With regard to available financial resources and effectiveness of their use, the main instrument introduced so far in this field has been the ‘Solidarity Fund’ created in 2002 by Regulation 2012/2002⁴⁹. This Regulation spells out that assistance shall be provided mainly in case of natural disaster but it does not rule out assistance also in case of man-made disasters (such as industrial catastrophes like that of Seveso in 1976). The main reason for this concentration on natural disasters may lay in the fact that man-made disasters are usually of a smaller dimension and in such situations we have usually clear responsibilities (either individual or by the government authorities if they have neglected their surveillance duties).

This Regulation expressly refers to solidarity which has to be shown by the Union in case of ‘major disasters’. Again, the concentration on ‘major’ disasters is fully reasonable out of the EU perspective in view of the limited amount of EU resources available and the fact that the subsidiarity principle applies. EU assistance is complementary to that of the affected MS.

According to this Regulation a ‘major disaster’ within the meaning of this Regulation ‘means any disaster resulting, in at least one of the States concerned, in damage estimated either at over EUR 3 billion in 2002 prices, or more than 0.6% of its GNI.’⁵⁰

Furthermore it is requested that ‘serious repercussions on living conditions, the natural environment or the economy in one or more regions or one or more countries occurs on the territory of that State’.⁵¹

Since 2002 in over fifty cases assistance was provided by the Solidarity Fund, the major benefitting countries being by far Italy and Germany.

The solidarity fund has been criticized in the past for not reacting timely enough in the wake of a disaster and for the fact that the terms for mobilizing the

⁴⁹ Council Regulation 2012/2002 of 11 Nov. 2002.

⁵⁰ *Ibid.* at Art. 2.2.

⁵¹ *Ibid.* at Art. 2.1.

Fund were not transparent enough.⁵² By the introduction of additional coordinating mechanisms of the Solidarity Clause it is hoped that this problem can be addressed more effectively.

5.6 ASSISTANCE BY MS

In case of terrorist attack or a natural or man-made disaster solidarity is not only expected by the Union as a whole (and jointly by MS) but also by single MS. According to Article 222.2 TFEU, in such a case, at the request by the political authorities of an affected MS other MS shall offer assistance.

This provision offers, therefore, no basis for preventive action by other MS, although, of course, MS are free to assist each other on the basis of international law in the spirit of friendly relations and good cooperation, so that they could share, for example, intelligence or other information crucial for preventive action against terrorists. The expression ‘shall’ evidences that we are confronted here with a real duty of solidarity although these solidarity duties of the ‘horizontal level’ are, by far, not so pronounced as those of the ‘vertical order’, those between the Union and single MS. This is further confirmed by the Declaration No. 37 on Article 222 TFEU cited above.

This provision offers much more leeway for the MS when determining the appropriate means to comply with the solidarity obligations than it is the case with the corresponding obligations by the Union. In practice, this provision opens a broad spectrum for possible ways of compliance. This declaration is surely not suited to set the Member States’ assistance obligation fully aside, as this would be contrary not only to the principle of *effet utile* but also to the principle of loyalty according to Article 4.3 TEU. On the other side, in view of this vague formulation, save a manifestly abusive attitude by a MS, it will be next to impossible to express legal criticism against a MS because of its supposedly too limited assistance to other MS. In any case, already the existence of this obligation as such can exert considerable (moral) pressure on fellow MS. This pressure is further heightened by the second sentence in Article 222.2 TFEU according to which ‘Member States shall coordinate between themselves in the Council’. This solemn forum is well-suited to remind MS of their solidarity obligations.

⁵² S. Blockmans, *L'union fait la Force: Making the Most of the Solidarity Clause (Art. 222 TFEU) in EU Management of Global Emergencies* 111–135, 133ss. (I. Govaere & S. Poli eds, Brill/Martinus Nijhoff 2014).

5.7 IMPLEMENTATION

According to Article 222.3 TFEU '[t]he arrangements for the implementation by the Union 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'. This has happened, at least partly, by the decision of 24 June 2014.

Arrangements for coordination in the Council rely on the EU IPCR arrangements of 2013,⁵³ which are based on the EU Crisis and Coordination Arrangements (CCA) of 2006 conceived in the wake of the terrorist attacks of Madrid (2004) and London (2005) and the Tsunami catastrophes in the Pacific and in the Indian Ocean 2004.

The IPCR is a Presidency driven mechanism. After invocation of the solidarity clause by an affected MS the Presidency of the Council shall activate the IPCR arrangements if not already in use and thus inform all MS of the solidarity clause invocation.⁵⁴

Among all the institutions responsible for the implementation of the Solidarity Clause of most pivotal importance is the Commission's Emergency Response Coordination Centre (ERCC) which acts as the initial 24/7 point of contact at Union level with Member States' competent authorities and other stakeholders.⁵⁵ Once the Solidarity Clause has been invoked the Commission and the High Representative will identify and mobilize the Union instruments that seem most appropriate to solve the respective crisis. There are numerous structures and institutions within the EU that may contribute to the solution of a crisis. In the Joint Proposal for a Council decision on the implementation of the Solidarity Clause⁵⁶ as examples are mentioned the following structures: DG ECHO, HOME, SANCO, TAXUD (for structures within the Commission) and FRONTEX, ECDC, EUROPOL, EMSA, EFSA and EMA (for EU decentralized agencies).⁵⁷ Many relevant structures are also to be found within the European External Action Service and furthermore the network of Delegations is to be mentioned.⁵⁸ The most important EU response centre for each crisis will constitute the hub and the interface with Member States (the 'centre of gravity'), supported by the full spectrum of specialized services.⁵⁹

⁵³ Council Decision of 25 Jun. 2013.

⁵⁴ Council Decision of 24 Jun. 2014, Art. 5.1.

⁵⁵ *Ibid.* at Art. 5.6.

⁵⁶ JOIN(2012) 39 final of 21 Dec. 2012.

⁵⁷ *Ibid.* at 3.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

An important task by the ERCC will be the production of ‘Integrated Situational Awareness and Analysis (ISAA) reports’ which will facilitate the search for coordinated solutions.

5.8 RISK AND THREAT ASSESSMENT

The Union aims both at preventing situations of crisis (as far as this is possible) and enhance its problem resolution capacity in the case that such a crisis arises. An important instrument to this avail is the risk and threat assessment at Union level.⁶⁰ Such reports may be requested by the European Council from the Commission, the High Representative and Union agencies, where appropriate. These reports draw on information compiled by relevant Union institutions and on information provided voluntarily by MS. Where relevant, also the EU Counter Terrorism Coordinator shall be involved in the preparation of such reports.⁶¹

6 CONCLUSIONS

If Article 222 TFEU has mainly a coordinative function with regard to already existing instruments and powers one may be tempted to ask what is the added value of this provision. Such a value is surely given, let alone if we look at the institutional and the procedural transparency it creates. In the past, when the pillar structure of the European Union law was still in place, this need for a more effective coordination was even more pronounced as the competences solidarity measures were based upon were regulated in different pillars.⁶² While the pillar structure has been abandoned by the Treaty of Lisbon the need for a more effective coordination was still given. By dedicating to solidarity a specific norm in the TFEU the role and the importance of this concept was considerably heightened. Although Article 222 TFEU is not a general norm on solidarity but has a rather specific field of application its inspirational value for the further development of this concept cannot be overestimated. This norm makes clear that some of the most basic security challenges for the Union can only be tackled by a solidarity approach.

The coordination of procedures and instruments effectuated by Article 222 and its implementation provisions contribute also further important elements to the formation of a European administrative law.

⁶⁰ Art. 8, Decision of 24 Jun. 2014.

⁶¹ *Ibid.*

⁶² D.Thym (note 14), para. 26.

If Article 222 TFEU has therefore primarily a coordinative function it is not be forgotten that within the whole system of primary law this provision is only part of a broader range of norms that pursue similar aims: within the TEU Articles 4.3, 21, 31 and 42.7 have to be mentioned. Within the TFEU in addition to Article 222, Articles 196 and 214 are of immediate relevance. Within the European Union there is therefore a second level of coordination that has to be taken into consideration. The solidarity clause is only part of a broader set of norms pursuing similar aims and reinforcing each other mutually. An assessment of the role of Article 222 that does not consider this broader context will therefore necessarily remain incomplete and not be suited to capture the real potential of this norm. For a glimpse on this mutual interaction reference can be made to Article 21 TEU, describing the aims the Union pursues by its external action.

According to Article 21.2 c) TEU the Union wants to:

(‘c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;’

and according to Article 21.2 g) it aims at

‘assist[ing] populations, countries and regions confronting natural or man-made disasters’.

Provisions such as Articles 222 or 196 TFEU not only create a mirror competence for internal use but they reinforce Union action on the external side.

On a whole it can be said that by the Treaty of Lisbon, solidarity has further gained in importance; this principle is here to stay. It will be an important reference point for the further discussion about the development of the EU legal order as a whole. The relevance of solidarity for the European integration process to be a success has been known for over half a century. As shown, provisions on solidarity, be they explicitly declared as such or not, are scattered over the whole EU legal order. Article 222 TFEU, although not being a general norm on solidarity, and the Decision of 24 June 2014, have given an important contribution to lend more coherence to a broad array of provisions on solidarity and to make their application more effective. Solidarity is not a panacea and the many provisions on solidarity within EU law are not aiming, alone or in conjunction, to bring about what has been termed a ‘transfer union’ in which solidarity would be governed primarily by altruistic elements. By the Decision of 24 June 2014 the European Union has shown, however, that implementation measures to this clause can make a difference even if they are designed restrictively and do not foresee the allotment of additional resources. Designed this way, the concept of solidarity is surely an intelligent steering instrument for the allocation of resources within a Union that is both aspiring at more equality and at the creation of an economic environment honouring achievement and favouring thereby economic growth.