

# Ukraine: New U.S. Deployments to Europe Might Raise War Powers Resolution Questions

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In response to Russia's invasion of Ukraine, and in coordination with NATO allies, President Biden has [announced the deployment](#) of U.S. armed forces to Poland, Romania, Bulgaria, Lithuania, Estonia, Latvia, Greece, and the Czech Republic, as well as Germany, to defend the eastern flank of NATO. These deployments might raise questions about the role of Congress under the [War Powers Resolution](#) (WPR) concerning the use of U.S. armed forces in connection with the Ukraine conflict.

## Presidential Reporting of Deployments Under the War Powers Resolution

Congress enacted the WPR to create congressional-executive procedure, triggered by presidential consultation with and notification to Congress, for decisions to use U.S. armed forces. Pursuant to [Section 4](#), the President must notify the Speaker of the House and the President pro tempore of the Senate within 48 hours after introducing U.S. armed forces (1) into active or imminent hostilities, (2) into a foreign nation while equipped for combat (except when solely for supply, repair, or training), or (3) in numbers that “substantially enlarge” combat-equipped, foreign-deployed U.S. armed forces. The notification must describe the “circumstances necessitating” the deployment, its “estimated scope and duration,” and the “constitutional and legislative authority” for the decision. Notifications are usually made publicly available, but they can be provided in partially or entirely classified form. The President is required to “provide such other information as the Congress may request” in connection with a notification, and must report to Congress on continuing deployment at least once every six months.

The Biden Administration has announced deployments of approximately [15,000 U.S. troops](#) to and within Europe in response to Russia's invasion. The President has [not made](#) any [publicly available](#) notifications pursuant to Section 4 regarding these deployments. While some of the new deployments have a [supply](#) or training element, they might not be “solely” for that purpose, as they are [intended](#) for NATO defense. Congress may consider whether these new deployments “substantially enlarge” existing deployments. For examples, U.S. troop presence in [Poland](#) has reportedly increased from about 4,000 to [8,700 or more](#), and U.S. deployment to [Romania](#) increased from about 900 to [1,900 or more](#). At least 7,000 additional U.S. troops have deployed to [Germany](#), and might have redeployed elsewhere in Europe. In addition, no

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Section 4 notifications from the President concerning initial U.S. deployments to most of NATO's eastern member states, some of which have hosted U.S. troops for several years, have been publicly reported.

### Determining "Hostilities"

The WPR contains provisions circumscribing the President's authority to introduce U.S. armed forces into "hostilities." While the executive branch often seeks to [foreclose](#) congressional findings of hostilities for the purposes of the WPR, the resolution itself seems to seek the [involvement](#) of [Congress](#) in determining whether active or imminent hostilities exist, to "insure that the collective judgment of both the Congress and the President will apply." Section 4's notification requirements are not just for hostilities, but for all combat-equipped deployments, creating a process that informs and involves Congress in situations where interbranch disagreement and possible changes in circumstances might require a decision on certain uses of U.S. armed forces based on such "collective judgment."

The term "hostilities" is not directly defined in the WPR. According to executive branch [interpretation](#), the term applies only to active exchanges of fire between U.S. and enemy forces. The legislative history of the WPR, however, [states](#) it also "encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict," and such hostilities are "imminent" when "there is a clear potential either for such a state of confrontation or for actual armed conflict." The 116<sup>th</sup> Congress agreed to two resolutions requiring removal of U.S. armed forces (both vetoed) utilizing broadened concepts of hostilities regarding U.S. military involvement in [Yemen](#) and against [Iran](#). Regarding the current situation, the Biden Administration has [maintained](#) that U.S. armed forces will not fight in Ukraine, but has also stated that recent deployments are intended for [defense of NATO countries](#), including the use of military force if Russia attacks a NATO ally.

### Determining the President's Authorities

Absent a Section 4 notification, it is not clear which constitutional and legislative authorities the President is relying on for these new deployments, or whether this reliance comports with the provisions of the WPR. The Administration has [confirmed](#) that no current legislation authorizes military action against Russia. The President's exclusive constitutional powers to introduce U.S. armed forces into hostilities, [according](#) to the WPR, are limited to defense of the United States and its armed forces against armed attack. While the [North Atlantic Treaty](#) commits NATO member states to assist a member when attacked, it does not require use of military force, stating instead that a member state may take "such action as it deems necessary." Additionally, the WPR [states](#) that treaties cannot serve as domestic authority for introducing U.S. armed forces into hostilities. The executive branch has [taken the position](#) that the President can direct extensive military operations if they do not constitute "war" in the constitutional sense and such operations serve a sufficient national interest.

### Possible Employment of WPR Procedure

Some Members of Congress have [addressed](#) the issue of the shared constitutional war powers of Congress and the President, calling on the President to consult with Congress and seek specific legislative authorization for any use of military force related to Russia's invasion of Ukraine, in accordance with the WPR. Arguably the absence of Section 4 notifications concerning Ukraine-related deployments might serve to short-circuit the process of shared decisionmaking intended by the WPR. Some Members of Congress might wish to request that the President provide Section 4 notifications that explain not only the practical and policy decisions to use U.S. armed forces in response to Russia's invasion of Ukraine, but also the asserted authorities that permit such use.

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