

EXPERT'S INSIGHTS

Veto Challenge in EU Decision-making

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Abstract

Complex geopolitical developments demonstrate the need for the European Union to reform internally and enlarge externally. Both processes are interlinked and relate to making the Union an active global player. Most European policies are decided by large consensus, which effectively means qualified majority. There are several areas considered sensitive for Member States and subjected to unanimity in decision making.

Historically deepening and widening of the Union have been done by revisions of the Treaty with gradual transfer of policy areas from unanimity to qualified majority.

The article explores present day challenges on further transformations for the next political cycle to rebalance the decision-making power between Member States and EU institutions.

Keywords: unanimity, veto power, qualified majority, CFSP, EU enlargement

JEL: F15, F17, C33

Introduction

Recent discussions at European level revived the everlasting debate on the significance of unanimity which effectively grants veto power in EU decision making. This prerogative, when invoked in certain cases, specified in the Treaty on European Union² (TEU, 2016), blocks

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² The Maastricht Treaty on European Union, signed February 1992, entry into force November 1993.

collective action³ or reshapes agreements⁴ according to priorities of a single Member State. The veto right is also subject to a broader political debate regarding the return of some competences in policy making from European to national level. In view of the upcoming elections for the European Parliament, such ideas are vocally expressed by Eurosceptic and nationalistic players in the European political space.

In the context of European integration, the transition from unanimity (right to veto a certain decision) to **qualified majority voting** (QMV) in decision making by the European Union has been on the agenda of several Treaty revisions. Basically, the question on voting power relates to the progressive transformation of the European Economic Community into present day European Union. Historically the unanimity rule was gradually overruled by majority voting in response to deepening the policy integration and geographic expansion from 6 to 27 Member states. The process marks the transfer of decision-making power from Member States to European institutions.

Political context and urgency of transition to QMV

Systemic pursuit of unanimity was introduced by the so-called Luxembourg compromise⁵ which allowed Member States to veto a decision they regarded as “vital national interest”. It is an informal agreement putting an end to the six months “empty chair” crises⁶. In political terms it safeguarded the intergovernmental nature of the European Economic Community. That system in decision making lasted for 20 years until 1986 when the first major reform of the founding Treaties was undertaken by the Single European Act⁷ (SEA, 1987). The need to review mechanisms and enhance coherence, speed and effectiveness of institutional actions was articulated in the mandate of the inter-governmental negotiations. The moves to change were prompted by enlargement of the then European Community to the North (UK, Ireland, Denmark in 1973) and to the South (Greece in 1981, Spain and Portugal in 1985), but also by the need to add new momentum to the European integration by completing the Internal market.

The Single European Act (SEA) amended the rules governing the functioning of the European institutions, expanded the powers and created new competences of the then European Community. The political will to speed up the creation of the Single market by 1993 was the driving force to increase the number of cases where the Council could take a

³ The European Council December 14-15, 2023 had lengthy discussion on opening accession talks with Ukraine and Moldova due to Hungarian claims that offering membership is not the right approach. Finally, Hungary abstained. According to the Treaty abstentions do not prevent unanimous decisions.

⁴ Extraordinary European Council February 1, 2024 on the revision of the Multiannual Financial Framework (European Council, 2024).

⁵ Luxemburg Accord reached in January 1966.

⁶ In July 1965, de Gaulle boycotted European institutions due to several issues regarding European political integration which led to the confrontation. De Gaulle did not agree with the Commission's attempt to create a shift towards supranationalism, extending powers beyond national borders.

⁷ Signed February 1986, entry into force July 1987.

decision by qualified majority rather than by unanimity and thus to avoid delays due to the search for unanimous agreement among the then 12 Member countries.

Under the new system of rules governing decision making, **qualified majority became the norm regarding the internal market, maritime and air transport, economic and social cohesion** – to counterbalance the effects of the completion of the internal market on less developed regions, social policy – health and safety at work, **research and development, environment**.

Regarding foreign policy, the presidency of the Council was entrusted with the responsibility for initiating action and coordinating member countries' positions.

The adoption of the SEA paved the way to further political integration to be incorporated in the Treaty on European Union – the Maastricht Treaty⁸.

Unanimity challenges

In the context of European integration, the transition from unanimity (right to veto a certain decision) to qualified majority voting in decision making by the European Union has been on the agenda of several Treaty revisions. Basically, the question on voting power relates to the progressive transformation of the European Economic Community into present day European Union. Historically the unanimity rule was gradually overruled by majority voting in response to deepening the policy integration and geographic expansion from 6 to 27 Member states. The process marks the transfer of decision-making power from Member States to European institutions.

With various EU Treaty amendments, more EU policy areas have moved from governments agreeing by unanimity to agreeing by QMV, largely so that decisions can be made more easily in an expanding EU and not be held up by a need for consensus. Defenders of unanimity emphasize that the increased use of QMV does have implications for national sovereignty because it means individual governments cannot veto proposals they disagree with. They claim that the rule encourages harder negotiations, enhances democratic legitimacy, strengthens unity, improves implementation, and offers small states a shield against the demands pushed by the largest countries. The opposite view argues that unanimity hinders decision making, fosters a lowest-common-denominator mindset (in particular on foreign policy issues) and prevents the EU from achieving its full potential on the global stage.

The intensity of the “unanimity vs. qualified majority” debate has gone through various ups and downs according to the state of world affairs.

The question is how to find the right balance between the blocking power of governments and the power of the Union to act. The closest the EU has been to providing a definite answer to the dilemma was in December 2007, when leaders signed up to the Treaty of

⁸ The Treaty of Maastricht established the EU, detailed the QMV voting system and transferred some policy areas from unanimity to qualified majority voting.

Lisbon and remodeled – yet again – the balance of power between the states and the institutions.

The Lisbon Treaty established qualified majority for the vast majority of policy areas (so that about 80% of the decisions are taken by QMV). At least 55% of countries (or 15 out of 27 Member States) voted in favour and the proposal was supported by Member States, representing at least 65% of the bloc's population (or the so called Double majority). At the same time the Lisbon Treaty also reinforced the unanimity rules in certain spheres deemed politically sensitive, such as foreign and security policy, taxation, the common budget and enlargement.

The complex geopolitical environment (the war in Ukraine and in the Middle East raging in the immediate neighborhood of the Union), the prospect of further enlargement, as well as the political objective “for ever closer Union”⁹ intensified the debate on amending the rules governing unanimity voting.

In several resolutions, the European Parliament calls on the heads of state or government to set up a Convention to revise the Treaties, proposing a new institutional setup for the EU, abolition of veto powers, more EU powers in health, energy, defense and social and economic policies, a full and direct right of legislative initiative for Parliament and better protection of founding values.

Following the Conference on the Future of Europe and in the context of unprecedented challenges and multiple crises, MEPs are advocating reforms that will enhance the EU's capacity to act and strengthen the “say of citizens”. The Parliament proposals to amend the Treaties (EP Resolution, 2023) were approved by 291 MEP's voting in favour, 274 against and 44 abstentions.

Similar deliberations are voiced informally by groups of Member States, although in a more cautious manner, since there is no willingness for a Treaty change. The clear preference is to resort to options provided for in the Lisbon Treaty. There are several clauses, the so-called “*passerelle*” clauses which provide for “bridges” to switch decision making from unanimity to QMV to make EU decision making more flexible: Article 48 (7) of the Treaty on EU reads: “*Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorizing the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defense*”.

⁹The EU Treaties (TEU, 2016) contain three references to “ever closer union”:

The Preamble to the Treaty on European Union: *RESOLVED to continue the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.*

Article 1 of TEU with similar wording to earlier Treaties: *This Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.*

The Preamble to the Treaty on the Functioning of the European Union (TFEU): *DETERMINED to lay the foundations of an ever-closer union among the peoples of Europe*

Decisions with military implications and in the field of defense are excluded from this possibility. The EU Treaties provide also for specific “*passerelle* clauses” in six areas:

- **Common Foreign and Security policy** (Article 31(3) of TEU) ;
- **Family law with cross-border implications** (Article 81 (3) of the Treaty on the functioning of the EU / TFEU);
- **Social policy** (Article 153 (2) of TFEU);
- **Environmental policy** (Article 192 (2) of TFEU).
- **Multiannual Financial Framework** (Article 312(2) of TFEU);
- **Enhanced cooperation** (Article 333 of TFEU)

The use of a “*passerelle* clause” means there is no need to formally amend the Treaties and thus no requirement for ratification by the EU Member States. However, the prerequisite for switching from unanimity to QMV is the unanimous decision by the Member States.

Currently initiatives to gradually change voting rules focus on Common Foreign and Security Policy, common budget, and taxation policy.

Unanimity in Common Foreign and Security Policy (CFSP)¹⁰

Article 31(1) of the Treaty on European Union reads as follows: “*Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise*”.

There are options provided for by the Treaty which pave the way for certain decisions in CFSP to be approved by QMV as long as they do not entail “military or defense implications”:

- **Constructive abstention.** When a member state does not agree with a collective action, it chooses to abstain rather than veto. The action is then approved and the member state, following a “spirit of mutual solidarity,” commits not to interfere. Article 31(1): “*When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted*”.
- **Special derogation:** Member states can vote by qualified majority to adopt a decision that defines a common action or position but only if the decision stems from a mandate given by the European Council or a proposal tabled by the High Representative (presently, Josep Borell). Article 31(2) reads: “*By derogation from the provisions of paragraph 1, the Council shall act by qualified majority*”:

¹⁰ CFSP provisions under the Treaty are *sui generis* and do not apply to other policy areas.

- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),
- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,
- *when adopting any decision implementing a decision defining a Union action or position, when appointing a special representative in accordance with Article 33*”.
- **Passerelle clause:** The European Council may adopt a decision that enables member states to act by a qualified majority in specific cases of foreign policy. Article 31 (3) reads: *“The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.”*
- **Emergency break** allows Member States to voice their vital national interests in the very few decisions in CFSP which can be taken by QMV. **Article 31(2) TEU reads:** *‘If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity’*”.

The Treaty provisions have been recalled on different occasions by the High Representative for CFSP when decision making on foreign policy matters is delayed¹¹ or blocked¹² in appeal to speed up the process. Prospective enlargements also raise questions on efficiency of action in reaching unanimous agreement by 27+ Member States. The complex geo-political environment poses demand on the Union to react swiftly to crises in different parts of the world.

In 2023 a “Group of Friends to change CFSP unanimity provisions” was established by nine Member States¹³ to promote a gradual shift from unanimity to QMV in the field of

¹¹ For example, Greece and Hungary delayed EU statement on the dispute between China and the Philippines on territorial claims in South China Sea; Cyprus delayed sanctions against Belarussian officials accused of brutal repression after falsified elections.

¹² For example, Hungary blocked renewal of arms embargo against Belarus until all other members agreed to exempt a certain category of small arms; Greece blocked EU statement in UNHRC on China's human rights record; Czechia, Hungary and Romania blocked EU statement condemning relocation of US Embassy to Jerusalem; Italy blocked EU statement recognizing Guaido as Venezuela's interim president; Greece and Cyprus blocked EU statement regarding Russia's failure to comply with INF Treaty; Poland and Hungary blocked Declaration of the EU-Arab League Summit due to provision on migration; France blocked EU statement condemning Khalifa Haftar's military offensive on Libya's capital; Hungary blocked EU statement condemning Turkey's operation in Syria; the list can be prolonged.

¹³ The Group of Friends on Qualified Majority Voting in Common Foreign and Security Policy is formed by Belgium, Finland, France, Germany, Italy, Luxembourg, Netherlands, Slovenia, Spain.

foreign policy. In a short statement dated May 4, 2023 they launched an inclusive “Group of Friends to foster QMV in the EU’s CFSP”:

“The objective of the “Group of friends” is to improve effectiveness and speed of our foreign-policy decision making. Against the backdrop of Russia’s war of aggression against Ukraine and the growing international challenges the EU is facing, the members of the Group are convinced that EU foreign policy needs adapted processes and procedures to strengthen the EU as a foreign policy actor. Improved decision making is also key to making the EU fit for the future” (Joint Statement, 2023).

The group aims to make progress in improved decision making in CFSP in a pragmatic way, focusing on concrete practical steps and building on provisions already provided for in the Treaty on European Union.

Members agreed to regularly take stock and underlined the need to work closely with all Member States of the European Union, as well as to coordinate with EU institutions. “All EU Member States that want to make progress on Common Foreign and Security Policy decision-making, especially the increased use of Qualified Majority Voting, and without prejudice to a wider debate on QMV in other policy areas, are welcome to join the Group. The Group will share the results of its deliberations transparently with all Member States”.

The statement stresses that future changes would build upon the provisions “already provided” in EU Treaties, a clarification that the group does not aim at constitutional reform.

Further clarifications were forwarded to the public by an open letter, dated June 12, 2023 and signed by the “Group of Friends” foreign ministers¹⁴. While underlining the need for enhancing the Union’s capacity to deliver in times of crisis, the ministers advocate moving beyond old dividing lines between those in favor of more majority decision making and those opposed to it. They suggest proceeding in a pragmatic manner by utilizing provisions already built into the TEU in a more flexible way that can work for everyone:

- “Greater use of “constructive abstentions” as set out in Article 31 (1) TEU. We want to build on this emerging¹⁵ trend — and we commit ourselves to systematically scrutinizing our own positions with a view to switching from a vote against to a constructive abstention”;
- “We are proposing QMV be put to a practical test. Certain EU foreign policy areas already allow for decision-making by qualified majority, based on article 31 (2) TEU. If, for example, the Council has unanimously decided to set up a civilian EU mission, the operative terms of that mission could then be decided by QMV. We could similarly apply QMV when deciding on the basis of common EU positions in international human rights forums”.

¹⁴ Romania co-signed the open letter, thus joining the Group of Friends.

¹⁵ When the Foreign Affairs Council voted on the new EU training mission for the Ukrainian military Austria, Ireland and Malta abstained voicing their constitutional neutrality.

- “We seek to build bridges or — in EU lingo — “*passerelles*”. Via the “*passerelle*” clause in article 31 (3) TEU, the Council can already decide — unanimously — to make decisions by qualified majority the standard procedure in particular foreign policy fields. We suggest exploring this “bridge” in well-defined areas within the CFSP as well”.
- “Moreover, we suggest adapting the way we take decisions in areas that do not require formal voting, but consensus applies in practice, nonetheless. When the High Representative makes a public statement on behalf of the EU, for instance, the text could be agreed in a Council implementing decision by qualified majority, in accordance with article 31 (2) TEU. This would speed up the way we communicate and make our European voice stronger.”
- “Obviously, member states may invoke the emergency brake provided for in article 31 (2) TEU for vital and stated reasons of national policy. Moreover, we will work on a “safety net” mechanism, in addition to the existing emergency brake, which will seek to ensure that vital national interests will continue to be respected in areas of the CFSP where majority voting is expanded through the “*passerelle*”.

Reflection among ministers continues informally in small groups of Member States and at informal Council meetings. For small and medium-sized Member States the preferred option is more frequent use of “constructive abstention”. Another idea was floated by a Franko-German group of experts – to apply a “unanimity minus one” option. However, that means Treaty change, since currently there is no such provision.

Striving for consensus should still be the main objective and QMV only used as last resort.

Unanimity in Enlargement Policy

The decision to accept a new member is taken unanimously. The rule is applied at all stages of the accession process – opening negotiations, processing negotiation chapters, completing accession talks. The resulting Accession Treaty is subject to ratification by the European and national parliaments. Successful ratification means everybody must be in agreement with the outcome of the accession process.

While the unanimity principle itself is not questioned, to be ready for the next enlargement the EU must reform its institutions, policies and budget.

In its conclusions dated December 14-15, 2023 the European Council underlined that enlargement is a geo-strategic investment in peace, security, stability, and prosperity, highlighting the need for reforms to get the Union enlargement ready (European Council, 2023).

The Franko-German group of experts, mentioned above, launched several reform proposals in the short- and in the long term, aimed at increasing the EU capacity to act, strengthening rule of law and democratic legitimacy and preparing the institutions for enlargement. Their report (Franko-German WG Report, 2023) outlines different avenues

for Treaty change and proposes that certain states move forward at different speeds, depending on their willingness to reform. For the next institutional cycle, after the elections for the European Parliament, the group of experts recommends transition to QMV in all policy areas in parallel to changing voting weights within QMV, limiting the use of unanimity, and extending EU competences, reform of the Multiannual Financial Framework (the multiannual EU budget), increasing the EU budget in nominal size and in relation to GDP. For some of these reform proposals the “*passerele*” clauses could be used if there is consensus to proceed, while for most of them a Treaty change would be needed. The experts admit that in such a scenario a Treaty revision would require differentiation – where the revision deepens integration either by adding new competences to the Union or by extending QMV – and the unwilling Member States could be offered opt-outs. Another proposal is to add the Euro to the non-negotiable elements of the EU integration alongside the core values – rule of law, democracy, and human rights.

The experts propose an integration model, comprising four concentration circles, each with a balance of rights and obligations:

- **the core circle** (euro zone plus other coalitions of willing);
- **the EU** (all current and future Member States, bound by the same political objectives and benefiting from the cohesion policy and redistributive policies);
- **Associate Membership** (not bound to “ever closer Union” and deeper integration; the core area of cooperation would be the single market);
- **the European Political Community** (focused on geo-political convergence and political cooperation).

Participation in the deeper areas of integration should be open to all Member States.

The paper drafted in response to invitation from the French and German Ministries of Foreign Affairs can be regarded as summary of the proposals floated by institutions and capitals.

Conclusion

The veto challenge marks the deeper debate on the future direction of European integration, going into areas considered sensitive for Member States. It marks the dividing line between deeper integration and intergovernmental political cooperation. At stake is European political unity. In the run-up to the European Parliament elections (June 2023) it is unlikely to formalize proposals for changes in order not to feed in the campaign of Eurosceptic parties¹⁶. The recent Resolution adopted by the European Parliament calling on Member States to set up Convention for Treaty revision (including *inter alia* abolition of veto powers) signifies the opinion of present party composition of the Parliament. The outcome of the elections will determine (increased weight of Eurosceptic parties) to what extent a change in competences between governments and institutions is achievable.

¹⁶ Opposition to “ever closer Union” was the main slogan in the Brexit campaign.

At times of crisis (Brexit, COVID) Member States demonstrated political unity on the understanding that no single country can deal with it on its own. Unanimous decisions were taken for common purchases of vaccines to deal with health crises, for issuing common debt to finance the Recovery and Development Plan¹⁷. The policies governing the green transition and digital transformation are already subject to QMV in decision making. At first glance revisions of current rules seem unnecessary since these policy areas are not less sensitive for individual countries. At the same time, the next institutional cycle means new composition of the European Parliament and the European Commission, new strategic agenda, new budgetary framework¹⁸, i.e. unanimity matters for making progress.

Recent commitment to further enlargement also poses questions on the effective functioning of the Union due to more veto power in unanimity decisions.

Public trust measured by Eurobarometer polls (Eurobarometer, 2023) indicates that 68% of respondents at EU level are in favor of EU membership, while 42% of Europeans are dissatisfied with the way the EU is working at present. According to the poll, the priority issues for citizens (at various degree in different Member States) are actions against climate change, measures to fight poverty and social inclusions, measures to support the economy and create new jobs, fight against terrorism and organized crime, migration and asylum.

The next political cycle will be dominated by the reform debates on policy areas, decision-making options, institutional set up, unity and differentiation, re-design of enlargement etc., quite a long “to do” list for politicians to define the Union direction for the years to come.

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¹⁷ Next Generation EU – 800-billion-euro financial instrument to help repair the economic and social damage brought about by the coronavirus pandemic.

¹⁸ Current multiannual financial framework 2021-2027 expires and the next one has to be negotiated by Member States.

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