

SHIFTING FROM UNANIMITY TO QUALIFIED MAJORITY VOTING IN THE EU ENLARGEMENT PROCESS?



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Abstract

This chapter will attempt to answer the question about whether the concerns of small members in protecting the fundamental values of the EU and their sovereignty, when shifting to QMV, are justified; and furthermore, whether the QMV could enhance the EU's influence in CFSP and manage internal conflicts. Answers will also be sought to the question of whether QMV would enhance the EU's credibility in the perception of candidate countries by making the decision-making process faster and more efficient. Using theoretical and legal analysis of the relevant provisions of EU Treaties and other legal instruments, the issue of the correlation between the decision-making process established within the EU and the EU's efficiency in implementing its enlargement policy will be explored. Arguments will be presented for and against the introduction of QMV in CFSP and to answer the question of whether, to increase the EU's credibility in enlargement, it is necessary to amend the provisions of the Treaties, or whether it is sufficient to interpret them.

The debates on EU enlargement, on the reasons for delays in the process, and on proposals for acceleration of the process, at national compared to EU level in the real geopolitical context, are both controversial and complex. The positions on this are directly contradictory, depending on whether they come from EU bodies or from the Member States. There are also cracks in theoretical and expert knowledge. Some of this is presented in this chapter, focusing on the method of decision-making (by consensus, or by over-voting) in the accession process. For example, in the so-called 'EU enlargement paradox' the Clingendael Report, states that EU enlargement is both

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inevitable and impossible at the same time. It is inevitable for geostrategic reasons, and impossible for political institutional reasons.

Keywords: enlargement, Common Foreign and Security Policy (CFSP), Unanimity (Consent) Qualified Majority Voting (QMV), constructive abstention, emergency brake, the Passerelle clause

1. Introduction

The consent of all European Union (EU or Union) Member States is required for key decisions in the enlargement process such as: the opening of accession negotiations, the conclusion of an accession treaty, the admission of a new Member State, and budgetary adjustments. The procedure is therefore complex, lengthy and politically demanding, as consensual decision-making with some exceptions is prescribed at several stages of the accession process. The need for consent can slow down progress, as individual Member States can use their veto if they do not agree with the specific conditions.

The Treaty of Lisbon introduced Qualified majority voting (QMV) for various policy areas but retained unanimity (consent) for politically sensitive issues such as common foreign and security policy (CFSP) including enlargement. Art. 31(2) TEU states that decisions in the CFSP are generally taken with unanimity, but it allows for QMV in specific cases (emergency brake). Art. 31(3) TEU introduces a special ‘passerelle clause’ that enables the European Council to unanimously decide to act by QMV in areas of CFSP other than those mentioned in Art. 31(2). Art. 31(4) TEU reinforces the limitations set by Art. 31(3), clarifying that military or defence-related decisions cannot be made using QMV. These Articles collectively establish the framework for applying QMV within the CFSP, allowing for more efficient decision-making while maintaining certain safeguards regarding sensitive issues.

There is a strong push to adopt QMV for decisions related to the CFSP in the EU debate. Advocates argue that this would prevent individual Member States from blocking collective action, however smaller and medium-sized Member States fear that shifting to QMV could marginalise their power within the EU, reducing their influence in decision-making processes. They argue that under QMV, larger states could dominate votes, leading to outcomes that may not reflect the interests of smaller nations.

The debate over shifting from unanimity to QMV in the EU enlargement also reflects the views that the legal basis for the transition to QMV decision-making already exists, namely in the exceptions to the second para. and the passerelle clause to the third para. of Art. 31 TEU, if so interpreted.

2. Enlargement Decisions Requiring the Consent of All EU Member States

2.1. General on EU Enlargement Decision-Making

Decisions on EU enlargement are therefore explicitly reserved to unanimous decision-making by the European Council, with a few exceptions, which shall be discussed in this chapter. The procedure is therefore complex, lengthy and politically demanding, as consensual decision-making is prescribed at several stages of the accession process. An analyse can be undertaken, in this part of the chapter, as to whether the complexity of the process is the cause of the low efficiency of EU enlargement, whether it can be simplified, and whether amendments to the founding treaties are necessary for this.

Art. 218 of the Treaty on the Functioning of the European Union (TFEU) in the Chapter: Agreements between the Union (EU) and Third Countries, outlines the procedures for negotiating and concluding international agreements, including those related to accession. It specifies that negotiations are conducted by the Council, which acts unanimously when required. The Council in principle acts by a qualified majority, however, according to point eight of the Art. 218 TFEU, it acts unanimously: (a) when the agreement covers a field for which unanimity is required for the adoption of a Union act, and (b) for association agreements and the agreements referred to in Art. 212 TFEU (economic, financial and technical cooperation measures, including assistance) with the states which are candidates for accession.

The consent of all EU Member States is required for key decisions in the enlargement process such as: the opening of accession negotiations, the conclusion of the accession treaty, the admission of a new Member State, changes to the EU's institutional framework (if necessary) the budgetary adjustments. The need for consent can slow down progress, as individual Member States can use their veto if they do not agree with the specific conditions.

2.2. Opening of Accession Negotiations

The legal basis for achieving consensus among EU Member States for the opening of accession negotiations is primarily found in the TEU and TFEU. Art. 49 TEU states that any European state that respects the values of the EU and is committed to promoting them may apply to become a member. According to Art. 49 TEU the applicant State addresses its request to the Council, which acts unanimously after consulting the Commission and after receiving the consent of the European Parliament, acting by majority of its members. Thus, it is explicitly emphasised that the decision to admit new members requires unanimous agreement from all existing Member States.

Accession negotiations can begin once the European Council has issued a negotiating mandate to the European Commission. This mandate is crucial as it sets the framework for negotiations and requires consensus amongst all Member States to proceed. According to the procedures outlined in the treaties, all EU Member States must unanimously agree to open negotiations with a candidate country.

This means that any member state can block the initiation of talks if it does not consent. Before negotiations can formally start, the European Commission conducts a detailed screening of the candidate country's legislation against the EU *acquis communautaire*. The results of this screening are then communicated to the European Council, which must again reach a consensus on whether to proceed with the opening negotiations under specific chapters. After successful negotiations, any accession treaty must also be endorsed by the European Council and requires ratification by all EU Member States, further emphasising the need for consensus throughout the entire process.

2.3. Conclusion and Ratification of the Accession Treaty, Admission of a New Member State

According to the 2nd para. of the Art. 49 TEU, the conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, are the subject of an agreement between the Member States and the applicant State. This agreement must be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

As pointed out, Art. 218 TFEU lays down the procedure for concluding international agreements, including the accession of new countries. This chapter determines that in principle the Council of the EU acts by a qualified majority, but unanimity is required for certain types of agreements, including the accession of new members.

Once the accession negotiations of a candidate country have been concluded and all the conditions have been met, an Accession Treaty must be approved by a consensus of all EU Member States. Each Member State must give its consent to this treaty, which means that the decision must be unanimous. Once concluded, the treaty must be ratified by all Member States and also sometimes by candidate countries. Once the negotiations have been concluded, the terms, including any safeguard clauses and transitional arrangements, are incorporated into the Accession Treaty. This treaty must receive the consent of the European Parliament and the unanimous approval of the European Council. Once the Accession Treaty has been signed, the contracting states must ratify it in accordance with their respective constitutional rules, which represents an additional level of approval and consensus at national level. This process ensures that the interests of all Member States are taken into account, and that the necessary consensus is reached for the successful enlargement of the EU.

Once negotiations have been concluded and the accession treaty signed, a unanimous decision is required on whether the country should become a full member

of the EU. This usually takes place within the framework of the European Council, where the heads of state and government take the final decision on whether the country should be admitted into the EU.

2.4. Treaties on Changes to EU Institutions and Adjustment of the EU Budget

If enlargement requires changes to EU institutions (e.g. an increase in the number of members of the European Parliament or changes to voting rights in the Council of the EU), which is normally necessary, a change to the European Treaties is necessary. Any change to the EU Treaties, including those related to enlargement, requires a unanimous decision by all Member States, which must then be confirmed by ratification in all Member States (sometimes also by referendum).

EU enlargement means that the Union budget will have to be adjusted to provide funding for the new Member States (particularly for the cohesion and structural funds, which are important in supporting the economic development of new Member States). If enlargements require changes to the multiannual financial framework or other EU financial rules, this would require the agreement of all Member States.

The EU can also be faced with decisions involving specific measures related to security and external relations with new members, such as crisis assistance, defence policy or border protection. In such cases, a unanimous decision is also required among all Member States, especially when there are major political or security changes in the enlargement.

Although candidate countries are not required to adopt the Euro immediately, the decision to enlarge the Eurozone requires consensus among EU members, particularly because of the economic and financial implications for the Union.

2.5. Examples of Neighbouring Member States Blocking EU Accession

In the history of the EU accession, Member States have repeatedly used the institution of consensus or of the Member States' veto, which in principle applies in the field of enlargement. This raises the legitimate question of whether their reasons for using the veto can be classified as being in the national interests of the Member State, or whether they are simply following undiluted bilateral issues that have nothing to do with the EU's CFSP.

It is generally known that Greece for example, blocked North Macedonia's EU accession talks for years due to a dispute over the name 'Macedonia', which Greece argued implied territorial claims over its own northern province of Macedonia. This issue was resolved with the Prespa Agreement in 2018, allowing North Macedonia to proceed with its EU aspirations. However, tensions have resurfaced, particularly with Bulgaria, which has also raised objections based on historical and identity issues.

Following the resolution of the name dispute with Greece, Bulgaria has since blocked North Macedonia's accession talks over issues related to history and national identity. Bulgaria has required North Macedonia to provide guarantees regarding

historical narratives and minority rights, leading to stalled negotiations since late 2002.

It is generally known that Turkey and Greece and Cyprus have a longstanding dispute over Cyprus. Turkey's EU accession process has been significantly hindered by its longstanding disputes with Greece and the Republic of Cyprus. The division of Cyprus and Turkey's refusal to recognise the Republic of Cyprus as an EU member state have led to Greece and Cyprus blocking further negotiations with Turkey since around 2010.

Slovenia and Croatia also have a border dispute. Slovenia has previously blocked Croatia's accession process due to a border dispute concerning the Bay of Piran. This issue was a significant point of contention during Croatia's negotiations, although it ultimately joined the EU in 2013 after resolving some aspects of the dispute.

Serbia's path to EU membership has been complicated by its refusal to recognise Kosovo's independence. This non-recognition is a significant barrier, as several EU Member States also do not recognize Kosovo, affecting Serbia's negotiations.

These examples illustrate how bilateral disputes can significantly impact the EU accession process for candidate countries, demonstrating the complex interplay between national interests and regional stability within the context of EU enlargement. The question is therefore justified as to whether the current way in which the Member States unanimously decide on enlargement corresponds to the EU's high ambitions for enlargement in the coming period.

3. Moving to Qualified Majority Voting (QMV) in CFSP?

3.1. The Double Majority Rule and Reinforced Qualified Majority

The legal basis for the double majority rule in the EU is established primarily through the Lisbon Treaty, which came into effect on November 1st, 2014. This treaty reformed the voting procedures in the Council of the EU, introducing a new system of qualified majority voting (QMV) that incorporates a double majority requirement: namely a majority of Member States and the majority of the population. The double majority rule is codified in Art. 16, paras. 3, 4 and 5 of the TEU that outlines the general voting rules in the European Council, and Art. 238, para. 2 of the TFEU that specifies the conditions under which QMV operates, including provisions for reinforced majorities.

The introduction of this voting mechanism was aimed at improving decision-making efficiency within an enlarged EU while ensuring that smaller Member States retain a voice in legislative processes. A majority of Member States and the majority of the population is required by EU law. A proposal must receive support from at least 55% of Member States, which translates to a minimum of 15 out of 27 countries

(as of now). A decision can thus be blocked by at least four Council members, representing a total of 35% of the EU population. Simultaneously, the proposal must be backed by Member States representing at least 65% of the total EU population. This dual requirement ensures that both enough countries and a significant portion of the population are in favour of a decision, enhancing democratic legitimacy.

For proposals not originating from the European Commission or the High Representative, a reinforced qualified majority is required. This entails support from at least 72% (20 Council members) of Member States and representing at least 65% of the EU population. The double majority rule enhances both representation and decision-making efficiency by requiring broad consensus across Member States and their populations, thus reflecting a more democratic approach to governance within the EU framework.

3.2. The Double Majority Means Enhanced Representation for Smaller States

The double majority rule in the EU introduces enhanced representation for smaller states; it significantly impacts smaller Member States by altering their influence and representation within the decision-making processes. As presented, under the double majority rule, a decision in the EU Council requires approval from both a majority of Member States and a majority of the EU population. This system tends to favour smaller Member States because it allows them to maintain a relatively high voting power compared to their population size. For instance, smaller countries often have more votes per capita than larger nations, which can enhance their ability to influence decisions despite having fewer citizens.

The double majority rule aims to improve decision-making efficiency by making it easier to achieve qualified majorities and more difficult to form blocking minorities. This change can benefit smaller states by reducing instances where a few large countries can veto decisions, thus allowing more collective action on issues that affect all Member States.

However, this also means that smaller states must be strategic in coalition-building to ensure their interests are represented. In summary, the double majority rule impacts smaller EU Member States by enhancing their representation and influence while redistributing power dynamics within the Council. While it presents opportunities for greater participation in decision-making processes, smaller states must adapt strategically to maintain their interests amidst a shifting political landscape.

3.3. Enlargement of the EU and the Double Majority Rule

QMV in the CFSP is specifically addressed in the Art. 31(2) TEU. This book chapter states that decisions in the CFSP are generally taken by unanimity, but it allows for QMV as an exception (constructive abstain). Art. 31(3) TEU has a special ‘*passerelle clause*’ that enables the European Council to unanimously decide to allow the Council to act by QMV in areas of CFSP other than those mentioned in Art. 31(2).

Art. 31(4) TEU reinforces the limitations set by Art. 31(3), clarifying that military or defence-related decisions cannot be made using by QMV. These Arts collectively establish the framework for applying QMV within the CFSP, allowing for more efficient decision-making while maintaining certain safeguards regarding sensitive issues.

The Treaty of Lisbon introduced QMV for various policy areas but retained unanimity for politically sensitive issues such as foreign policy (also taxation). This has prompted calls for reform, especially as the EU faces urgent global challenges that require swift and cohesive responses. In particular, the issue of majority or consensual decision-making has arisen due to the often implausibly long accession processes of some candidate countries for EU membership. The theoretical and political debate over shifting from unanimity to QMV in the EU is contentious, with diversified arguments for and against. These Arts collectively establish the framework for applying QMV within the CFSP, allowing for more efficient decision-making while maintaining certain safeguards regarding sensitive issues.

Transitioning to QMV would likely streamline the decision-making process in the EU Council, particularly during the enlargement process. Currently, decisions require unanimous consent from all Member States, which can lead to gridlock, especially when individual countries use their veto power over issues unrelated to membership criteria. By adopting QMV, a proposal could be approved with most Member States and population representation, thereby reducing the number of veto points and facilitating quicker decisions on accession negotiations.

Transitioning from unanimity to qualified majority voting in the context of EU enlargement presents both opportunities and challenges. While it could enhance efficiency and credibility in the accession process, careful consideration must be given to ensuring equitable representation for all Member States and addressing potential resistance to such changes. The ongoing debates among EU leaders will be crucial in shaping how these reforms are implemented moving forward. Despite its potential benefits, there are significant challenges to implementing QMV in practice.

3.4. EU and Member States' Debate on Shifting to QMV

The push for the introduction of QMV has been firmly in the EU expert and political discourse domain for a long time. The aim is to improve the EU decision-making process and to make EU action more effective, especially in the CFSP. The issue of unanimity voting, which sometimes makes it very difficult to reach an agreement and moving to QMV while protecting the interests of small countries stand out in the discussions. There is opinion that all issues now decided by unanimity, should be decided by a qualified majority, except for the accession of new members to the EU. This debate is highly controversial and interest-driven and reflects the gap in power and influence between small and large countries.

As stated in Navarra, the European Parliament has repeatedly expressed its support for the greater use of QMV in its annual resolutions on the implementation of the CFSP, based on a report by its Committee on Foreign Affairs (AFET), and has

long urged Member States to use QMV for decisions in areas of CFSP that do not have military or defence implications and to make full use of ‘passerelle clauses’ under Art. 31(3) of the TEU.

According to Navarra, recently political discussion concerning the need to move away from unanimity in CFSP-related matters has intensified. Most recently the Parliament’s Committee on Constitutional Affairs (AFCO) stressed the untapped potential of the Treaties and the possible activation of ‘passerelle clauses’ to move to QMV in specific fields of CFSP.

There are several EC communications referring to more efficient EU decision-making, related not only to EU Common Foreign and Security Policy (2018)¹ but also to EU tax policy (2019),² EU energy and climate policy (2019),³ and more efficient decision-making in social policy (identification of areas for an enhanced move to qualified majority voting) (2019).⁴ In addition, The European Parliament adopted several related resolutions, for example in 2017 on improving the functioning of the EU,⁵ on the institutional set-up of the EU,⁶ in 2022 on the call for a Convention for the revision of Treaties⁷ and in 2023, on the implementation of the ‘passerelle clauses’ in EU Treaties.⁸

In the 2018 Communication (A stronger global actor: more effective decision-making in the field of the EU CFSP) the European Council highlighted three areas to extend QMV within the EU’s CFSP: sanctions, human rights positions and civilian missions. The Commission argues that these reforms would not require changes to EU treaties.⁹

According to Repčys, supporters for abolishing Member States’ veto power in the CFSP gained a new impetus – the wishes of European citizens. One of the proposals from the citizens-led Conference on the Future of Europe¹⁰ is to ‘improve its [EU’s] capacity to take speedy and effective decisions, notably in the CFSP’. The first proposed measure is to move away from unanimity towards QMV on certain CFSP issues. The objective of proposal 39 (EU decision making process) is to improve the

- 1 Commission communication of 12 September 2018 ‘A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy’ (COM(2018) 647).
- 2 Commission communication of 15 January 2019 ‘Towards a more efficient and democratic decision making in EU tax policy’ (COM (2019)0008).
- 3 Commission communication of 9 April 2019 entitled ‘A more efficient and democratic decision making in EU energy and climate policy’ (COM (2019)0177).
- 4 Commission communication of 16 April 2019 entitled ‘More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting’(COM(2019)0186).
- 5 Resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty.
- 6 Resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty.
- 7 Resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties.
- 8 Resolution 2022/2142(INI) on the implementation of the passerelle clauses in the EU Treaties.
- 9 Schutte, 2019.
- 10 The Conference on the Future of Europe (CoFE) concluded its work in May 2022 with the submission of 49 proposals to the European institutions.

EU's decision-making process, thus ensuring the EU's capability to act, while taking into account the interests of all Member States and guaranteeing a transparent and understandable process for the citizens, in particular by reassessing decision-making and voting rules in the EU institutions, focusing on the issue of unanimous voting which makes it very difficult to reach agreement, while ensuring a fair calculation of voting 'weights' so that small countries' interests are protected. There is an opinion that all issues decided by way of unanimity should be decided via a qualified majority. The only exceptions should be the admission of new membership to the EU and changes to the fundamental principles of the EU as stated in Art. 2 TEU and the Charter of Fundamental Rights of the European Union.

4. Theoretical Debate Over Shifting to QMV

4.1. General

The following research questions are analysed and will be attempted to be answered in this part of the paper: (1) Is the concern of small members in protecting the fundamental values of the EU (freedom, democracy, equality) and their sovereignty, when shifting to QMV, justified? (2) Could QMV enhance the EU's influence in CFSP and manage internal conflicts by promoting efficiency and compromise? (3) Would QMV enhance EU credibility in the perception of candidate countries by making the decision-making process faster and more efficient?

The question of whether the concerns of small Member States that their sovereignty will be threatened by the transition to QMV are justified, will be investigated using methods of theoretical and legal analysis. The point of whether the introduction of QMV can really contribute to increasing the EU's ability to manage conflicts between members, primarily by promoting flexibility to reach a compromise, will also be looked into. Finally whether the decision-making process in the EU could be made faster and more efficient with QMV, thereby increasing the credibility of the EU in the perception of the population of the candidate countries, will also be investigated.

Many experts suggest that with appropriate safety mechanisms, the shift to QMV can strengthen the EU's ability to act without fundamentally undermining the sovereignty or values of its smaller members.

For example, Ondarza and Stürzer point out that Germany is seeking to build a coalition in favour of more majority decisions considering the difficult decision-making processes regarding foreign and security policy, and the prospect of future EU enlargement.

Mintel and von Ondarza argue that with so-called '*passerelle* clauses' in the TEU, more decisions by QMV could be introduced without a major treaty change or a

convention. According to Mintel and von Ondarza, what is required is an institutional reform package in which decisions by QMV are extended with the aim of facilitating further enlargement of the EU, and are accompanied by emergency clauses to protect core national interests.

Pisklova examines how the expansion of the EU affects the QMV system, including shifts in member states' influence and the efficiency of EU decision-making.

On the other hand, several authors directly oppose the introduction of QMV in the context of EU enlargement, primarily due to concerns over national sovereignty and the risk of dominance by larger member states.

Fiott and Tercovich show how unanimity affects the operation of CFSP and how divergences among EU Member States can be managed, before considering what costs and benefits could result from applying QMV in CFSP. From a more political or normative perspective, the authors recognise that Member States will continue to favour consensus in the area of CFSP.

The analysis of theoretical views on QMV in CFSP decision-making on the common foreign and security policy shows a marked diversity and two-sidedness, or rather a large gap between the supporters and opponents of the introduction of QMV in the CFSP. Although many agree that this would contribute to a greater efficiency in decision-making, which is a current flaw of the EU, the arguments of loss of sovereignty prevail, at least in smaller countries. It is therefore necessary to find ways to ensure that the democratic institute of consensus is not abused to resolve unrelated bilateral issues. Above all, it is necessary to establish intervening mechanisms such as the 'passarelle clause', constructive abstention and others.

Clingental analysis explores the limits of unanimity in the EU accession negotiations, especially when individual Member States obstruct the process over bilateral issues unrelated to the formal membership criteria. It concludes that if the EU is serious about its ambition to be a geopolitical actor, considering the political, legal and institutional implications of QMV in EU enlargement will be key.

Some theoretical perspectives on the individual questions posed above are presented below.

4.2. Is The Concern of Small Members in Protecting the Fundamental Values of the EU (Freedom, Democracy, Equality) and Their Sovereignty, When Shifting to QMV, Justified?

In this section, the theoretical views and opinions regarding the research question of the justification of small states' concerns about abandoning consensus and the wider introduction of QMV will be analysed. The key issue is trust, which is something that large countries must strive for because they have greater power and influence. As stated by Schutte, most member-states' concerns can be allayed, at least in the medium term. Germany and France must make greater efforts to consult and incorporate the views of smaller states across the policy spectrum to (re)gain

trust and goodwill. But the latter's fears also tend to be exaggerated, as the treaties provide strong protections for core interests.

Disagreements within the EU are and will be a reality that has various roots, not only size and power of the state, but also different neighbouring and geopolitical contexts and traditions, as well as different domestic political judgments. As pointed out by Schutte in 2019, divisions within the EU often prevent effective common action, as foreign policy decisions usually require unanimity. Divisions may stem from different analyses of the problem, conflicting national interests, or member-states acting at the behest of, or under pressure from, external powers. According to this view, the disagreements between Member States are further exacerbated by the need for consensus in voting on the CFSP, and not the other way around, i.e. that the introduction of QMV would lead to additional disagreements and divisions. This is therefore, according to this opinion, not a reason against the introduction of QMV in the CFSP area. This is not entirely true, as even with a majority vote disagreements remain unresolved, with the additional feeling among the outvoted Member States that no attempt was made to find a compromise.

Baraggia and Bonelli warn of the rise of conditionality in Union law, which further demonstrates how the use of conditionality tools is becoming truly pervasive in the Union's legal and political framework. Conditionality has been a common experience in bilateral relations between a Member State and a candidate country and is certainly an accompanying problem of consensual decision-making, which speaks in favour of opening possibilities or conditions for majority decision-making.

Addressing national interests is the next most used argument in discussions on QMV. This is why the discussions around amending Treaties to introduce QMV should include proposals that allow Member States to protect their vital national interests, which can help alleviate concerns about losing influence. For example, proposals include creating a 'sovereignty safety net' that would enable smaller countries to retain some level of control over decisions impacting their national policies. This approach aims to balance collective decision-making with respect for individual state sovereignty. However, this is easier to define at the level of principles than at the level of exact legal norms.

Schutte points out that many Member States oppose any extension of QMV to foreign policy: small Member States fear that larger Member States with greater voting power would ignore their views. Eurosceptic governments reject further encroachment on their formal sovereignty; and those states that profit from Chinese, and to a lesser extent Russian investment wish to preserve their ability to do foreign policy favours for their investors by blocking EU action.

We agree with the opinion that while QMV may facilitate faster decision-making, it also raises concerns about how the interests of smaller or less populous Member States might be represented. The current system tends to favour larger states due to their demographic weight in voting. Therefore, discussions around QMV must include safeguards to ensure that smaller Member States do not feel marginalised or overruled by larger coalitions, which could lead to tensions within the EU. Smaller

Member States fear that moving to QMV would reduce their influence in decision-making processes, particularly on issues of national interest. They argue that under QMV, larger states could dominate votes, leading to outcomes that may not reflect the interests of smaller nations. Some EU countries oppose QMV because they rely on their veto power to negotiate favourable terms with non-EU neighbours. The ability to block decisions is seen as a crucial tool for smaller states to exert influence.

Despite its advantages, moving towards QMV is likely to face resistance from several Member States that value their veto power as a means of protecting national interests. Many countries remain sceptical about relinquishing control over significant decisions, particularly those that pertain to sovereignty or sensitive political issues. Thus, any proposal for reforming voting procedures would need to navigate complex political landscapes and seek broad consensus among Member States.

We agree that there are serious concerns that abandoning consensus and implementing the QMV is politically challenging and complex, as it goes against the fundamental democratic design of the EU as an association of equal and sovereign states, especially if this requires changes to the founding treaties. That is why some Member States remain hesitant to lose their veto power. That could lead to unfavourable outcomes for their national interests. This resistance, according to advocates of QMV, can hinder the EU's ability to act cohesively during internal conflicts. On the other hand QMV is, according to its critics, a potential for undermining national interests. The risk of unfavourable decisions is higher. Under QMV, Member States may be compelled to accept decisions that contradict their national interests. This concern is particularly acute for smaller states that may lack the voting power to influence outcomes effectively.

To conclude, these arguments highlight the complexities of the debate over QMV, reflecting concerns about national sovereignty, influence, and the future cohesion of the EU.

4.3. Could QMV Enhance the EU's Influence in CFSP and to Manage Internal Conflicts by Promoting Efficiency and Compromise?

Lehne is of the opinion that the introduction of majority voting would not revolutionise the functioning of the council. Just like in other areas of EU policy, the priority will always be to act based on unanimity. Actual voting will be the rare exception. We can agree with this if we consider the current options of the Member States under Art. 131 TEU (e.g. constructive abstention). The positive, indirect effect of the introduction of QMV is the possibility of constructive abstention. Ultimately a majority vote should motivate Member States to creatively seek consensus to avoid disciplining or punishing a dissatisfied state. Namely, the option of resorting to a vote would make it more likely for unanimity to be achieved without much delay – and less likely that the substance of decisions would be diluted to the point of

the lowest common denominator of national positions.¹¹ There are opinions,¹² that QMV would boost the resilience of the EU's foreign-policy system to third-country influence, facilitate the emergence of a common strategic culture among the Member States, and mitigate the risk that the tone of common European foreign policy is set in various mini-lateral forums outside the EU.

Von Ondraza notes that using the so-called 'passerelle clauses' in the TEU, more decisions by QMV could be introduced without a major treaty change or a convention. However, abolishing national vetoes in this way would first require unanimity which is not currently on the horizon, as resistance is prevailing in smaller and medium-sized Member States, which fear that they could regularly be outvoted. What is needed, according to von Ondraza, is an institutional reform package in which decisions by QMV are extended with the aim of facilitating further enlargement of the EU.

We agree that majority voting is not a magic wand that will suddenly make CFSP decision-making and internal conflict solving more efficient, so the amendment of fundamental treaties must be approached with caution and trepidation. When explicitly asked whether majority decision-making is the best solution, the answer is more negative than affirmative. As pointed out¹³ majority voting would help, but it should not be regarded as a panacea that will overcome all the deficiencies of the EU's work on foreign policy. It needs to be accompanied by a reform of the relevant institutional arrangements.

Overall, while shifting to QMV could enhance the EU's ability to manage internal conflicts by promoting efficiency and compromise, it also faces substantial hurdles related to national sovereignty and member state resistance. The ongoing discussions on potential reforms are critical in determining how effectively the EU can navigate these challenges in the future. Next there are concerns over EU cohesion and credibility (fragmentation of unity). Critics argue that abandoning unanimity could weaken the EU's external credibility and internal coherence.

The current system fosters unity among Member States, and is viewed as significantly strong in fostering international relations. The transition to QMV might exacerbate political tensions within the EU, as Member States could find themselves at odds more frequently. This could lead to a fragmented foreign policy that undermines the EU's collective stance on global issues.

Theory¹⁴ explores the limits of unanimity in the EU accession negotiations, especially when individual Member States obstruct the process over bilateral issues unrelated to the formal membership criteria. To streamline EU enlargement, research explores the potential of qualified majority voting (QMV) at key intermediary stages of the accession process.

11 Lehne, 2022.

12 Nováky Niklas, 2021.

13 Lehne, 2022.

14 Zweers et al., 2024.

The fundamental question in interpreting the position of Member States that have open neighbourhood issues with candidate countries is whether it is permissible to declare a bilateral issue to be of national interest, thus justifying constructive abstention. The question to analyse is whether a member state uses an unresolved issue it has with its neighbour, for example regarding the border or the name of the country, to justify its right to veto a decision on enlargement. In interpreting these rules, the principle of loyal cooperation, which is binding on all Member States, must certainly be considered.

4.4. Would QMV Enhance EU Credibility in the Perception of Candidate Countries by Decision Making Process Faster and More Efficient?

Theory rightly raises the issue, as to whether EU enlargement is a one-size-fits-all approach, or a tool of geopolitics. As stated in Zweers for EU standards, things (after 24 February 2022 – Russia’s invasion of Ukraine) moved at lightning speed. After formally submitting their membership (Moldova, Ukraine and Georgia – the ‘Eastern trio’) applications in late February and early March 2022 the European Commission needed just over four months to complete its basic assessment. Zweers notes that it took North Macedonia a massive sixteen years to achieve the same result. Meanwhile, seven years after its application to join the bloc, Bosnia and Herzegovina has only managed to earn candidate status. Montenegro and Serbia, have been negotiating their EU accessions since 2012 and 2014 respectively.

There are different opinions on the reasons for delays in the Western Balkans enlargement. Analysing the Western Balkans, Lindsay et al 2018 highlight diversified national approaches in enlargement; they show that the national politics of EU enlargement are not only very different, but they are also driven by very different and often very specific national concerns. Svijič and Cerimagič note: there will be no new EU enlargement before the deepening of the EU. Dmitrov points out that to speak with one voice, policy proposals should be endorsed that would undoubtedly facilitate their accession process, such as the introduction of the QMV in the interim stages of the process. If a qualified majority is not introduced in the EU enlargement decision-making, the whole process will die, write Cvijic and Nechev.

As pointed out by Zweers, even after Russia’s invasion of Ukraine, the commitment to the accession process with the Western Balkans has remained ambiguous. On the one hand, the European Commission has sought to use the momentum to step up its discourse by admitting past mistakes and reassuring that the future of the Western Balkans lies within the EU. The European Commission has also proposed a Growth Plan for the Western Balkans that outlines tangible ways by which the candidates can partially integrate with the EU’s internal market before gaining full membership. Additionally, it has been pointed out by Bayer, that European Council President Charles Michel has called for 2030 to be recognised as the target date for both the EU and the candidates to be ready, contributing to the ongoing debate on how the EU itself should prepare for new members. Justifying enlargement by

fulfilling the Copenhagen criteria and by emphasising geopolitical necessity should be balanced in order for EU policy to maintain its legitimacy, as it is one of the conditions for public support for the enlargement process in the Member States. An enlargement policy that is full of delays in one period and hasty in the next does not inspire the necessary credibility.

There are opinions that we do not share, namely that implementing QMV, by amending the Treaties, could only enhance the credibility of the EU's enlargement process for candidate countries in the Western Balkans or for Ukraine, Moldova, and Georgia. Apparently a more predictable and efficient decision-making framework introduced by Treaties amendments would signal to these nations that their aspirations for membership are taken seriously and could potentially accelerate their integration into EU structures. Current issues surrounding EU enlargement are marked by a complex interplay of geopolitical dynamics, internal reforms, and the varying interests of Member States. There is no doubt that the potential shift from unanimity to qualified majority voting (QMV) in the context of EU enlargement could have significant implications for the decision-making processes within the Union. However, there is a big question as to whether the power of large countries to outvote small ones would contribute to more cohesion, internal democracy, tolerant dialogue, and quality decision-making by considering the interests of all nations, regardless of size, which is one of the democratic values in the EU's founding treaties.

It is our opinion that the Lisbon Treaty in its current form, if it is well interpreted, contains a built-in safety mechanism that is designed to ensure that no member state could be dictated to on issues vital to its national interests if QMV were to be used in CFSP. QMV safety mechanisms to protect minorities (small nations) should boost the resilience of the EU's foreign-policy system to third-country influence, facilitate the emergence of a common strategic culture among the Member States, and mitigate the risk.

As the first argument for the introduction of QMV in CFSP, some opinions underline the benefits of a faster decision-making process. As noted by Bayer, the European Commission argues that unanimity hampers the EU's abilities to adapt and quickly react to fast-changing foreign policy circumstances. QMV would incentivise Member States to search for common ground, because decisions would be reached in the shadow of the vote rather than of the veto. There are also different opinions that see an advantage in the current consensus decision-making arrangement in the CFSP area, which lies in democratic patience in seeking consensus. Defenders of the unanimity rule¹⁵ emphasise that unity is the EU's biggest strength. Former European Council President Charles Michel pointed out that unanimity 'pushes us to work unrelentingly to unite the Member States'. He underlined that there is a lasting commitment by the 27 countries to the adopted decision.

Still enhanced decision-making efficiency and higher speed of response is, for QMV advocates, the most frequent argument pro QMV; it apparently allows the EU

15 Repčys, 2022.

to make decisions more swiftly, which is crucial during crises. According to such opinions, the need for rapid responses to geopolitical challenges, such as Russia's actions in Ukraine, underscores the importance of moving away from a system that requires unanimous agreement among all Member States. This efficiency can help the EU act decisively in foreign policy and security matters. According to these opinions, the current security and geopolitical situation requires rapid reactions of this kind, which is hindered by unanimous decision-making and the veto right of Member States. The existence of QMV, according to these opinions, creates an incentive for Member States to negotiate and find common ground rather than relying on their veto power. Even if QMV is not frequently utilised, its presence encourages states to engage in discussions that lead to compromises, thereby reducing the likelihood of deadlock. This dynamic is essential for maintaining cohesion within the EU, especially when Member States are divided on critical issues. There are completely opposing opinions that argue for the current consensus arrangement in the CFSP with safety mechanisms against the use of the veto. We are more inclined to these views, as they are based on the belief that only consensus, as a method of decision-making, encourages and leads to democratic dialogue, that it is worth the effort. Majority decision-making, on the other hand, discourages efforts to find common ground.

5. Legal Analysis of Qualified Majority Voting in the EU's CFSP

5.1. Can QMV in CFSP Be Achieved Without EU Treaties' Change?

According to Art. 24 of the TEU, the CFSP is defined and implemented by the European Council acting unanimously, except where the Treaties provide otherwise (for ex. Art. 31 para. 2, stipulates a qualified majority also for decisions related to CFSP). Art. 31 of the TEU stipulates that European Council decisions on CFSP be taken by a qualified majority, when adopting a decision defining a Union action or position, relating to the Union's strategic interests and objectives (Art. 22(1)), and when adopting any decision implementing a decision defining a Union action or position. In addition, CFSP decisions of the European Council are taken by QMV, when 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.

'We are not advocating for treaty changes, nor do we envision drawn out academic debate. What we propose is a pragmatic approach focusing only on questions of foreign and security policy' is concluded in Baerbock, when advocating for greater use of QMV in the EU's CFSP, as currently set forth in the TEU. The question that will

be analysed below is whether greater use of QMV in the CFSP without amending the EU's basic treaties is legally feasible and, if so, in what way.

The question arises on how to achieve a resilient foreign policy in crisis geopolitical situations and how to ensure that the narrow, partial neighbourhood interests of Member States do not block the enlargement process as one of the fundamental strategies of the EU. Some analysts underline¹⁶ that without the unanimity rule, the EU's foreign policy would become more ambitious. The EU could bypass the lowest common denominator logic and adopt more ambitious sanctions packages to defend its public interests, resulting in a tangible increase of effectiveness. According to other authors,¹⁷ based on Art. 31/3 of the TEU, the introduction of majority voting could be achieved without treaty change. Art. 31/3 of the EU Treaty allows this based on a decision by the European Council. The treaty already offers ways to mitigate the concerns of governments that have so far been reluctant to act. In this chapter, we demonstrate that there is a legal basis for the use of QMV in the CFSP already in the provisions of the current treaties, without the need to amend them.

According to Sancin and Medževac, the analysis of the EU legal framework in CFSP decision-making shows that the legal basis for the transition to decision-making with the QMV exists, namely in the form of exceptions to the second para. of Art. 31 TEU and the bridging clause of the third para. of Art. 31 TEU, and it is important that it is interpreted correctly.

The option of constructive abstention allows countries to be exempted from implementing a particular decision. It offers a promising way of avoiding blockages, a way that should be employed more often in the future. There is also the emergency brake of pushing a decision to the European Council, if a country determines that 'vital and stated reasons of national policy' are at stake.¹⁸ The emergency brake is also mentioned in Baerbock, where it is argued that obviously Member States may invoke the emergency brake provided for in Art. 31 (2) TEU for vital and stated reasons of national policy. Moreover, there is a commitment¹⁹ that 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*.

There are others who agree with the opinion that EU treaties, without amendments, allow for the implementation of the QMV also in CFSP. For example, Sancin and Medževac are of an opinion that we agree with, namely that from a legal perspective, the current TEU and TFEU arrangements certainly already enables

16 Nováky Niklas, 2021.

17 Lehne, 2022: The option of 'constructive abstention' – recently used by Austria, Ireland, and Malta in the case of weapons deliveries to Ukraine – allows countries to be excepted from implementing a particular decision. It offers a promising way of avoiding blockages, a way that should be employed more often in the future.

18 Lehne, 2022.

19 Baerbock et al., 2023.

numerous transitions to decision-making by QMV in the area of CFSP. It is important that the applicable criteria are correctly interpreted.

The key question is how to interpret the concept of an essential and justified reason for national security. Sancin and Medževac point out that, when defining what is considered an essential and justified reason for national security, Member States should necessarily take into account the strategic interests and guidelines of the EC, which they have adopted by consensus. When interpreting national security interests, Member States must not disregard strategic interests and guidelines of the EC and pursue only their own narrow interests (e.g. open issues with neighbouring countries).

Schutte 2019 points out that in legal terms, the extension of QMV beyond the enabling clauses is relatively straightforward and does not necessitate the cumbersome process of changing the treaties. The so-called '*passerelle* clause', enshrined in Art. 31(4) TEU, offers the possibility to extend QMV to new policy fields within CFSP unless the decisions have military or defence implications. Art. 31(3) TEU accordingly states that the 'European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority'.

If we follow this interpretation, which we accept, the legal basis for effective decision-making in the CFSP in the EU is already provided in the current EU Treaties and no amendments are necessary. However, it is true that in practice, Member States often have different interpretations of what constitutes the national interests that justify such behaviour. Active participation in current geopolitical processes and efficient decision-making in CFSP (by waiving consensus and using the QMV) is already allowed by the EU law.

5.2. The Right to Abstain Council's Unanimous Vote (Constructive Abstention)

According to Art. 31 TEU, any member of the Council, when abstaining in a vote, may qualify its abstention by making a formal declaration (subpara. of the Art. 31/1). In that case, a member of the Council is not obliged to apply the decision but has to accept that the decision commits the Union (constructive abstention).

As stipulated in subpara. of the Art. 31/1, 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 must respect its position. Although a Member State using constructive abstention is not formally bound to respect the content of the measure, it must nevertheless respect the principle of sincere cooperation. This means that it must refrain from actions that would contradict the adopted positions of the EU or could reduce its effectiveness in international relations.

The institution of constructive abstention enables flexibility and efficiency in decision-making in the EU, especially in the field of foreign policy. This mechanism ensures the possibility of progress even in the case of disagreements between Member States, which is crucial for maintaining the unity and responsiveness of the Union

to global challenges. The right to abstain from a consensual decision of the Council, with the consequence that it is not binding on the abstaining country, provided that it does not obstruct that decision, is an important lever of compromise available to small countries in cases of disagreement. Of course, this is not a way for a country or group of small countries to block a decision; it does not therefore give a right of veto, but a compromise to get out of a conflict situation, which could certainly be used in the case of EU enlargement.

The constructive abstention can only be activated by less than a third of the EU Member States, which together represent no more than a third of the EU population. This means that the decision must be supported by a sufficiently broad base to prevent abuse of the institution. Namely, the subpara. of Art. 31/1 imposes the power of veto for the majority of one third (states and population) on all Council decisions. Namely, if the members of the Council qualifying their abstention represent at least one third of the Member States comprising at least one third of the population of the Union, the decision is not adopted.

The institute of constructive abstention in the EU is used primarily within the framework of the CFSP. This institution allows measures to be adopted even if some Member States do not agree, which is crucial for the EU to act in situations where a rapid decision is required. A group of EU foreign ministers²⁰ in the Opinion published as Baerbock et al suggest a greater use of ‘constructive abstentions’ as set out in Art. 31 (1) TEU.²¹ Member States have already started using this simple but highly effective option, which still allows a decision to pass – namely, by not objecting to it, and thus not stopping the other 26 members from moving forward. Baerbock express their commitment, to build on this emerging trend – and commit themselves to systematically scrutinising our own positions with a view to switching from a vote against to a constructive abstention.

As stated by Sancin and Mediževc, the obstacle to the use of the QMV is the emergency brake institute from the second para. of Art. 31 TEU, which instead of decision-making with the QMV can lead to decision-making by consensus. In their opinion, the Member States enjoy a wide field of free assessment in this case of discretionary decision-making on the use of the institute, but it seems that this field should not be unlimited when interpreting EU law systematically, including through

20 It's time for more majority decision-making in EU foreign policy, Opinion June 12, 2023: Annalena Baerbock is the federal minister for foreign affairs of Germany. Hadja Lahbib is the minister of foreign affairs, European affairs and foreign trade, and the federal cultural institutions of Belgium. Jean Asselborn is the minister for foreign and European affairs of Luxemburg. Wopke Hoekstra is the deputy prime minister and minister of foreign affairs of the Netherlands. Bogdan Aurescu is the minister of foreign affairs of Romania. Tanja Fajon is the minister of foreign and European affairs of Slovenia. José Manuel Albares Bueno is the minister for foreign affairs, European Union and Cooperation of Spain.

21 We saw just how effective ‘constructive abstentions’ can be last October, when the Foreign Affairs Council voted on the new EU training mission for the Ukrainian military.

the relevant case law of the ECJ. In doing so, the authors refer to the case law of the ECJ.

To conclude, constructive abstention from the first para. of Art. 31 of the TEU enables Member States to express their disagreement by abstaining from voting when deciding on CFSP measures. The institution of constructive abstention in the EU is used primarily within the framework of the CFSP, allowing measures which are crucial for the EU to act in situations where a rapid decision is required to be adopted even if some Member States do not agree. This means that a measure can be adopted despite the absence of consensus among all 27 Member States if a Member State abstains from voting.²² In that case, the abstaining Member State is not obliged to apply the decision but has to accept that the decision commits the Union. It is worth noting that an emergency brake may lead back to a decision by consensus (based on the European Council decision).

5.3. The Right to Oppose Council's QMV

Furthermore, according to Art. 31(2) TEU a member of the Council may declare that, for vital and stated reasons of national policy, he or she intends to oppose the adoption of a decision to be taken by qualified majority; in such a case a vote is not taken (emergency brake).

The High Representative, in close consultation with the member state involved, searches for a solution acceptable to it. If he fails, the European Council may, acting by a QMV, request that the matter be referred to the European Council for a decision by unanimity.

The right of a Council member to oppose a vote using a qualified majority (emergency brake) is important for conflict solving in the case of disagreements. As already explained, a member of the European Council declares opposition to the adoption of a QMV decision. It is sufficient to rely on compelling and justified reasons of national policy. In this way, the Member State obtains that a QMV vote is not taken in this case.

The provision in question essentially means that a member state may prevent the application of the QMV decision. The High Representative is obliged to try to find a solution acceptable to the member state. However, if the High Representative fails to do so, the European Council may, acting by a qualified majority, request that the matter be referred to the European Council; the latter shall take a decision on the matter, not by a qualified majority but by unanimity.

In addition, the European Council may unanimously adopt a decision stipulating that the Council by a qualified majority in cases other than those referred above, however these exceptions may not apply to decisions having military or defence implications (Art. 31/3 PEU).

²² Constructive abstention has been used in various decisions, such as the establishment of the EU Military Assistance Mission to Ukraine (EUMAM Ukraine).

5.4. The Duty of Sincere Cooperation When Applying the Brake Under Art. 31 TEU

The question arises of whether the right of a European Council member to invoke national interests, as stipulated in the TEU, does not allow for too broad a judgement that may completely prevent decision-making by a qualified majority. Or, in other words, to what extent does this judgement go, or does it outweigh the due consideration of the principle of sincere cooperation in the EU? The duty of sincere cooperation of EU Member States is an important part of the legal framework ensuring the effective functioning of the EU. The duty is set out in Art. 4, para. 3 of the TEU, which states that pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

According to Art. 4, para. 3, the EU and its Member States commit to respecting and assisting each other in carrying out the tasks which flow from the Treaties (the principle of sincere cooperation). The TEU obliges Member States to: (a) take any general or measures necessary to ensure fulfilment of the obligations arising out of the Treaties or from acts of the institutions of the Union, (b) support the Union in carrying out its tasks and refraining from any measure which could jeopardise the attainment of the objectives of the Union.

Key points of the duty of sincere cooperation are Member States' duties to: (a) refrain from any action which could jeopardise the achievement of the objectives of the EU; this includes conduct which could undermine the effectiveness of decisions taken at EU level (constructive abstention), (b) actively support the Union in carrying out its tasks and obligations, including participating in the formulation of the CFSP.

The principle of sincere cooperation is legally binding on all member state authorities and EU institutions and is reflected in their actions and decision-making. The application of the emergency brake under Art. 31, para. 2 TEU is thus subject to compliance with the European Council's decisions. When the emergency brake under second para. of the Art. 31 TEU is applied, Member States must comply with the decision to refrain from taking any action which could contradict the adopted positions of the EU or undermine its effectiveness in international relations.

The emergency brake may be applied in the context of the CFSP when a Member State considers that the proposed measure could jeopardise its essential interests. However, despite the application of the brake, the member state must still act in accordance with the principle of sincere cooperation and refrain from actions that could harm the interests of the EU. These duties are essential to ensuring the unity and effectiveness of the EU's actions and to maintaining trust between Member States.

Sancin and Mediževc are of the opinion that, based on the duty of sincere cooperation, it could be considered that EU Member States would have to justify the use of the emergency brake by necessity and demonstrate that to protect essential and justified reasons of national policy, it is absolutely necessary to decide by consensus. This would, analogously transfer to the field of CFSP the criteria that the CJEU has

developed in the case of a Member State's invocation of the essential interests of its security under Art. 346 TFEU. Sancin and Mediževc further urge that in order to successfully invoke 'essential interests', a member state must at least demonstrate that the mere protection of the claimed essential interests necessitates the exclusion of EU law under Art. 346 (any Member State may take such measures as it considers necessary for the protection of the essential interests of its security in a given case) (CJEU, C-620/16, 34–35; CJEU, C-187/16, 78; CJEU, C-615/10, 45).²³

5. Conclusions

5.1. General

The shift from unanimity to QMV in the EU is a significant topic of discussion, particularly considering geopolitical challenges and internal EU dynamics. This transition aims to enhance decision-making efficiency, especially in areas like foreign and security policy. There is a strong push to adopt QMV for decisions related to the CFSP. Advocates argue that this would prevent individual Member States from blocking collective action, particularly in response to crises like the Russian invasion of Ukraine. Shifting to QMV could also facilitate stronger measures against Member States that violate EU principles, addressing concerns about rule of law compliance. The Conference on the Future of Europe has also highlighted widespread public backing for moving away from unanimity towards QMV across various policy areas. Despite the momentum for change, several obstacles remain. Nevertheless, resistance from smaller states is here. Many smaller and medium-sized Member States' fears are justified. Shifting to QMV could marginalise their influence within the EU, leading to a reluctance to support such reforms. Experience shows the use of the veto to strengthen positions in resolving bilateral disputes. The unanimity required for changes is hardly to be achieved. Namely that implementing QMV through Treaty amendments requires unanimous consent among Member States, which is currently lacking due to differing national interests and concerns about losing veto power. The debate over shifting from unanimity to a qualified majority system of voting in the EU reflects broader tensions between national sovereignty and collective action. While there is significant advocacy for reform, especially considering recent global events, achieving consensus on such changes remains a complex challenge.

23 See Randazzo, 2014, pp. 1–4: In the light of such well-established case law of the Court of Justice, it is now crystal clear that Art. 346 is neither an automatic exclusion of defence from EU law, nor a provision limiting EU competence. As the Court of Justice ruled in the Spanish Weapons case (concerning the VAT exemption of firearms in several subsequent rulings, Art. 346 is just one of the Treaty-based derogations which deal with exceptional and clearly defined cases, and one which must be interpreted strictly.

The ongoing discussions will likely shape the future dynamics of EU governance and its ability to respond effectively to emerging challenges. The research has led us to the answers that we present below. We would like to point out that these results are not based on independent empirical analyses, but rather on assessments based on the secondary theoretical and legal sources that we have listed.

5.2. Small Member States Concern

To the research question, whether concerns of small (and medium-sized) Member States, in protecting the fundamental values of the EU (freedom, democracy, equality) and their sovereignty, when abandoning consensus, are justified, the answer is yes. The fear of small Member States that their sovereignty will be threatened by the transition to QMV is justified in their understanding of how QMV would function and their experience. The key issue is trust. Large countries must strive for trust, because they have greater power and influence. Some Member States remain hesitant to relinquish their veto power, fearing it could lead to unfavourable outcomes for their national interests. These are serious concerns that abandoning consensus and implementing the QMV is politically challenging and complex, as it goes against the fundamental democratic design of the EU as an association of equal and sovereign states, especially if this requires changes to the founding treaties. Addressing national interests is the next most used argument in favour of QMV. Discussions around QMV, should include proposals that allow Member States to protect their vital national interests, which can help alleviate concerns about losing influence. For example, creating a ‘sovereignty safety net’ would enable countries to retain some level of control over decisions impacting their national policies. However, this is easier to define at the level of principles than at the level of exact legal norms. Anyhow, discussions around QMV must include safeguards to ensure that smaller Member States do not feel marginalised or overruled by larger coalitions, which could lead to tensions within the EU.

An ability to manage EU internal conflicts, decision making efficiency and compromise concerns over EU cohesion and credibility (fragmentation of unity) is very much real. The introduction of QMV does not really contribute to increasing the EU’s ability to manage conflicts between members. The willingness and motivation to reach a compromise is logically lower with QMV. It is true that in the case of QMV, the decision-making process in the EU could be faster and shorter, but at the same time offers less ground for seeking positive compromises (a negative indirect effect of the introduction of QMV). Majority voting is thus not a magic wand that will suddenly make decision-making more efficient; QMV could help, but it should not be regarded as a panacea that will overcome all the deficiencies in EU decision making. While shifting to QMV could enhance the EU’s ability to manage internal conflicts by promoting efficiency, it also faces substantial barriers related to the sense of democracy, national sovereignty and Member State resistance. Abandoning unanimity could weaken the EU’s external credibility and internal coherence. Unanimity fosters

unity among Member States because it is viewed as a significant internal democratic strength. The transition to QMV might worsen political tensions within the EU, as Member States could find themselves in conflicts more frequently. This could even lead to a fragmented foreign policy that undermines the EU's collective stance on global issues. Still enhanced decision-making efficiency and higher speed of response is, for QMV advocates, the most frequent argument in favour of QMV; it apparently allows the EU to make decisions more swiftly, which is crucial during crises. According to such opinions, the need for rapid responses to geopolitical challenges, such as Russia's actions in Ukraine, underscores the importance of moving away from a system that requires unanimous agreement among all Member States. According to these opinions, the current security and geopolitical situation requires rapid reactions of this kind, which is hindered by unanimous decision-making and the veto right of the member state. Our research did not confirm these findings. There are completely opposite opinions that argue for the current consensus arrangement in the CFSP with safety mechanisms against the use of the veto. The existence of QMV does not guarantee nor encourage Member States to negotiate and find common ground. Even if a veto is not frequently utilised, its presence encourages states to engage in discussions that lead to compromises, thereby reducing the likelihood of deadlock.

However, if a member state uses an unresolved issue with its neighbour, e.g. regarding the border or the name of the country, to justify its right to veto a decision of enlargement, the principle of loyal cooperation, which is binding on all Member States, must certainly be considered; especially when individual Member States obstruct the process over bilateral issues unrelated to the formal membership criteria.

Justifying enlargement by fulfilling the Copenhagen criteria on one hand and by emphasising geopolitical necessity on the other should be balanced in EU policy in order to maintain its legitimacy, as it is one of the conditions for public support for the enlargement process in Member States. An enlargement policy that is full of delays in one period and too hasty in the next, does not inspire the necessary credibility. For example, we can compare Moldova, Ukraine and Georgia (the European Commission needed four months to complete their assessments) to North Macedonia (sixteen years), or Bosnia and Herzegovina (seven years to achieve candidate status), or Montenegro and Serbia (still negotiating their EU accession since 2012 and 2014 respectively). We do not share the opinion that implementing QMV, by amending the Treaties, could only enhance the credibility of the EU's enlargement process for candidate countries in the Western Balkans. Apparently a more predictable and efficient decision-making framework introduced by the Treaties amendments would signal to these nations that their aspirations for membership are taken seriously and could potentially accelerate their integration into EU structures. These expectations are unlikely. Current issues surrounding EU enlargement are marked by a complex interplay of geopolitical dynamics, internal reforms, and the varying interests of Member States. There is no doubt that the potential shift from unanimity to QMV in the context of EU enlargement could have significant implications for the

decision-making processes within the Union. However, there is one big question, whether the power of large countries to outvote small ones would contribute to more cohesion, internal democracy, tolerant dialogue, and quality decision-making by considering the interests of all nations, regardless of size, which is one of the democratic values in the EU's founding treaties. The Lisbon Treaty today, when properly interpreted, contains a built-in safety mechanism that is designed to ensure that no member state could be dictated to on issues vital to its national interests if QMV were to be used in CFSP. QMV safety mechanisms to protect minorities (small nations) should boost the resilience of the EU's foreign-policy system to third-country influence, facilitate the emergence of a common strategic culture among the Member States and mitigate the risk. We agree with what was pointed out by Charles Mitchel²⁴ that the current consensus decision-making arrangement in the CFSP area, which lies in democratic patience in seeking consensus is the EU's strength and that unanimity 'pushes to work unrelentingly to unite the Member States'.

5.3. Summary of Legal Findings

(1) EU treaties, without amendments, allow for the implementation of the QMV in CFSP: As stipulated in Art. 24 of the TEU, the CFSP is defined and implemented by the European Council acting unanimously, except where Treaties provide otherwise (for example Art. 31, para. 2, stipulates a qualified majority also for the decisions related to CFSP). EU treaties, without amendments, allow for the implementation of the QMV also in CFSP; the legal basis for the transition to decision-making with the QMV exists, as an exception to the second para. of Art. 31 TEU and the bridging clause of the third para. of Art. 31 TEU. The key question is how to interpret the concept of an essential and justified reason for national security. Member States should necessarily consider the strategic interests and guidelines of the European Council, adopted by consensus. Art. 31 of the TEU stipulates that decisions on CFSP are taken by the European Council acting unanimously, except, when adopting a decision defining a Union action or position (where they act by qualified majority).

(2) Constructive abstention: The option of constructive abstention allows countries to be exempted from implementing a particular decision. It offers a promising way of avoiding blockages, a way that should be employed more often going forward. Any member of the Council, when abstaining in a vote, may qualify its abstention by making a formal declaration (Subpara. of the Art. 31/1). In that case, member of the Council is not obliged to apply the decision but to accept that the decision commits the Union (constructive abstention). As stipulated in Subpara. of the Art. 31/1, in a spirit of mutual solidarity, the Member State concerned must refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States must respect its position. Although a Member State using constructive abstention is not formally bound to respect the content of the measure,

²⁴ Bayer, 2023.

it must nevertheless respect the principle of sincere cooperation. This means that it must refrain from actions that would contradict the adopted positions of the EU or could reduce its effectiveness in international relations.

(3) Emergency brake: According to Art. 31(2) TEU, a member of the Council may declare that, for vital and stated reasons of national policy, he or she intends to oppose the adoption of a decision to be taken by qualified majority; in such a case a vote is not to be taken (emergency brake). The right of a Council member to oppose a vote using a qualified majority (emergency brake) is important for conflict solving in the case of disagreements. It is sufficient to rely on justified reasons of national policy. The provision in question essentially means that a Member State may prevent the application of the QMV decision. The High Representative is then obliged to try to find a solution acceptable to the Member State. However, if the High Representative fails to do so, the European Council may, acting by a qualified majority, request that the matter be referred to the European Council; the latter takes a decision on the matter, not by a qualified majority but rather by unanimity. The emergency brake may be applied in the context of the CFSP when a Member State considers that the proposed measure could jeopardise its essential interests. However, despite the application of the brake, the Member State must still act in accordance with the principle of sincere cooperation and refrain from actions that could harm the interests of the EU. These duties are essential to ensuring the unity and effectiveness of the EU's actions and to maintaining trust between Member States. The question arises of whether the right of a European Council member to invoke national interests, as stipulated in the TEU, does not allow for too broad a discretion that may completely prevent decision-making by a qualified majority. Or in other words, to what extent can this discretion go, or does it outweigh the due consideration of the principle of sincere cooperation in the EU?

(4) The 'passerelle clause': The 'passerelle clause' (Art. 31(4) TEU), offers the possibility to extend QMV to CFSP unless decisions have military or defence implications. Art. 31(3) TEU accordingly states that the European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority. It is 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.

(5) The principle of sincere cooperation: The duty of sincere cooperation of EU Member States is an important part of the legal framework ensuring the effective functioning of the EU. The duty is set out in Art. 4, para. 3 of the TEU, which states that pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The principle of sincere cooperation is legally binding on all Member State authorities and EU institutions and must be reflected in their actions and decision-making. Application of the emergency brake under Art. 31, para. 2 TEU is thus subject to compliance with this principle. When the emergency brake under second para. of the Art. 31 TEU is applied, Member States must comply with

the decision to refrain from taking any action which could contradict the adopted positions of the EU or undermine its effectiveness in international relations. Following the duty of sincere cooperation, EU Member States must justify the use of the emergency brake demonstrating that they protect essential and justified reasons of national policy.

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