



Increasing CFSP and CSDP Effectiveness in Times of External Challenges

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Changing times: the EU's geopolitical awakening

- › 2024 Draghi and Letta reports and the 2025 Commission Competitiveness Report clearly link **external threats** to necessary **internal changes**
- › Implication: **accept the changing world** (demography, security, unilateralism) and adapt original EU starting points
 - In 1993, the EU and US economic areas had a comparable size
 - From 1993 to 2022 GDP per capita in the US increased by almost 60% in the EU less than 30%
- › *The US innovates, China imitates, the EU regulates...*

Combining values, interests and principles

- Article 3(5) TEU: ‘In its relations with the wider world, the Union **shall** uphold and promote its **values and interests**’
 - So values and interests need to be balanced
- Article 21(1) TEU indicates that the Union’s action on the international scene ‘**shall be guided**’ by the ‘principles’...
- At the same time, paragraph 3 of the same provision is again stricter and provides that ‘The Union **shall respect** the principles’
- This implies that in its dealings with other states, the Union has a duty to use a principled-based approach – which may limit the number of choices

Outline: Challenges and solutions in CFSP

- › Challenges
- › Solutions
- › Developments in the Common Security and Defence Policy (CSDP)

CHALLENGES

Challenge 1: The special position of CFSP

- › CFSP is based on ‘special rules and procedures’
 - Art. 31 TEU: unanimity as the default voting modality
 - Exclusion of the ‘legislative procedures’
 - Different role of the Institutions
 - CFSP in TEU rather than TFEU
- › The ‘normalisation of CFSP’ since Lisbon
 - Does it still make sense to treat CFSP differently?
 - The view of the Court of Justice of the EU
 - From staff cases like ‘*H*’ to more general cases like ‘*KS & KD*’ the Court has clarified its own role in CFSP which seems to merely exclude strategic/political decisions on foreign policy.

One step back: what is QMV?

- “A qualified majority shall be defined as **at least 55 % of the members** of the Council, comprising **at least fifteen of them** and representing Member States comprising **at least 65 % of the population** of the Union.
 - **A blocking minority must include at least four Council members**, failing which the qualified majority shall be deemed attained.” (Art. 16(1) TEU)
- ‘Super QMV’: “where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as **at least 72 % of the members** of the Council, representing Member States comprising **at least 65 % of the population** of the Union (Art. 238(2) TFEU)

Challenge 2: Vetoes and delays

- EU Member States increasingly – formally or informally – block or delay the adoption of certain CFSP decisions
- More than 30 individual vetoes, threats of veto or delays could be observed since 2016.
 - See Table in our 2022 report for the European Parliament on p. 64, as well as our ENGAGE Policy Paper (both with Dr. Viktor Szép)
 - From these 30 cases, 60 percent are related to Hungary (18 cases), while the rest can be linked to eight other Member States (Greece (4), Cyprus (2) and Austria, Czech Republic, Italy, France, Malta and Romania (1 each)).
 - BUT – most (threats of) vetoes are not in the public domain

Challenge 3: Overcoming fragmentation

- › The position of CFSP in the TEU and its ‘special rules and procedures’ hamper a holistic approach to EU external action
- › How to overcome a distinction between foreign and security policy that has always been largely artificial?
- › How to overcome the ‘tradition of otherness’ (Cardwell) of CFSP?

SOLUTIONS

Solution 1: Use QMV more often

- › The Council **shall** act by QMV (Art. 31(2) TEU)
 - A CFSP decision on the basis of a European Council decisions
 - A CFSP decision on the basis of a proposal by the HR following a specific request by the European Council
 - Any decision implementing a decision
 - Appointing a special representative
- › Procedural questions: a normal majority (Art. 31(5))
- › The Regulation on restrictive measures following a CFSP Decision
- › MS may block the use of QMV “for vital and stated reasons of national policy” (emergency break)
- › Statements in international organisations?
 - According to internal rules also on the basis of unanimity

Solution 2: Link with other issues to side-step unanimity

- Integration of EU external policies
 - E.g. ‘foreign policy through trade’ (e.g. Blocking Statute, Anti-Coercion Instrument, CBAM, Deforestation Regulation, Screening Regulation)
- Draghi: “we will need a genuine EU **‘foreign economic policy’** to retain our freedom”
 - Linking policy areas to prevent further fragmentation

Solution 3: Use constructive abstention

- The second subparagraph of Article 31(1) TEU **allows a small group of Member State(s) to abstain from a vote** and not to apply a CFSP Decision
 - Option for MS not to block a CFSP decision, but at the same time save face back home
 - Abstaining MS cannot take actions that would go against the EU's position

Solution 4: Allow for derogations

- › Adopt a CFSP decision by unanimity, but allow for exemptions
 - Example: the oil ban against the Russian Federation
 - Pragmatic way out of the dilemma, but a negative effect on the ‘common’ nature of CFSP

Solution 5: The general passerelle clause

- › Art. 48(7) TEU ('treaty revision light'): shift to QMV for certain policies after a unanimous decision by the European Council
 - Possible for CFSP
 - but not for decisions having military implications or those in the area of defence
 - Civilian CSDP missions?
 - **EP and national parliaments are involved**

Solution 6: The specific CFSP passerelle clause (Art. 31(3) TEU)

- **Extending the list of already existing possibilities for QMV in CFSP**
- This seems to be the 'easiest' option as it is less comprehensive and allows for QMV introduction for specific areas
 - Restrictive measures, human rights statements?
 - Not for decisions having military or defence implications
- No consensus reached at the GAC in September 2022

Support? The shift to QMV on the agenda

- EU institutions but also some EU governments – called on the Member States to gradually move from unanimity to QMV in CFSP matters.
- Between mid-2013 and mid-2022, we have observed **25 major political calls to shift from unanimity to QMV** in CFSP matters (p. 65 of the Report)
- May 2023: Creation of the **Group of Friends on Qualified Majority Voting** in the EU's Common Foreign and Security Policy
 - Belgium, Finland, France, Italy, Luxembourg, the Netherlands, Slovenia and Spain (later joined by Romania, Sweden and Denmark)
 - Franco-German working group: QMV should be extended to the CFSP and other areas by **June 2024**, on the basis of
 - 1. the passerelle clauses existing in the current treaties (preferred)
 - 2. a gradual introduction of QMV in three areas simultaneously: 1) EU enlargement and the rule of law, 2) foreign policy and defence, and 3) fiscal and tax policy

Proposal: use a step-by-step approach

- 'Super QMV' as a compromise?
 - 20 MS (72%) out of 27
 - or 27 minus 2 or 3 (proposal HR/VP in 2022)
 - BUT: can we simply change the voting rules? Would a political compromise be enough to start using Super QMV?
- And: no QMV for all CFSP areas, but a limited number of CFSP areas to start with / added to the already existing list of exceptions

Finally: political considerations

- › When is the '**Common**' nature of CFSP affected? (only 25 votes in favour OK, but what about only 20, or less?)
- › How does this affect **consistency** in EU's *common* foreign policy (which is a strong Treaty requirement)
- › Which countries should have voted in favour in which situations?

New development: CSDP is back on the agenda

- **Article 42(1) TEU:** The common security and defence policy shall be **an integral part** of the common foreign and security policy.
- **Article 42(2) TEU:** The common security and defence policy shall include the progressive framing of **a common Union defence policy**. This will lead to a **common defence**, when the European Council, acting unanimously, so decides.
- **Article 42(7) TEU:** **If a Member State is the victim of armed aggression on its territory**, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States
 - **Article 42(7) TEU:** [...] Commitments and cooperation in this area shall be consistent with commitments under the **North Atlantic Treaty Organisation**, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Developing CSDP on other legal bases

- › Stronger Commission involvement
 - 2025 'ReArm Europe' ('Readiness 2030')
 - SAFE: to facilitate the purchase of advanced weapons and ammunition
 - March 2024 European Defence Industrial Strategy + European Defence Industry Programme plan
- › 2023 Irdepa Regulation: the reinforcement of the European defence industry through common procurement
- › 2024 New Commissioner for Defence and Space
- › Also other examples reveal that the Commission uses other legal bases for defence-related issues
- › Supranationalisation by stealth?
- › Towards a European army?

In conclusion

- **No need for a treaty change** (although the separation between the TEU and the TFEU is clearly outdated)
- The European Council needs to use **the passerelle clause** and allow for more topics to be decided by QMV
 - Compromise proposals are on the table to reassure hesitating MS
- The combination of foreign and security policy with trade policies allows the Union to live-up to its own treaty brief to '**uphold and promote its values and interests**'
 - The 'Brussels effect' should also imply these values, including sustainability and rule of law principles

**RETHINKING
A GLOBAL EUROPE**
Ideas to Make the EU
a Stronger Global Actor



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STUDY

Requested by the AFCO committee



The implementation of Article 31 of the Treaty on European Union and the use of Qualified Majority Voting

Towards a more effective Common Foreign
and Security Policy?



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