



Wilfried
Martens Centre
for European Studies

Qualified Majority Voting in EU Foreign Policy: Make It So

Niklas Nováky



Summary

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This paper makes a case for extending qualified majority voting (QMV) to the EU's Common Foreign and Security Policy (CFSP), the Union's main framework for collective external action. Although many EU capitals are unwilling to move away from unanimity in decision-making on CFSP, the paper argues that the benefits of introducing some QMV to this intergovernmental domain outweigh the costs. 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. The Lisbon Treaty 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. Initially, QMV should be extended only to the adoption of EU statements on international human rights questions. Although a modest step, this would help build trust and confidence among the member states, both towards each other and in the use of QMV in CFSP. If the experience was positive, this could create momentum for expanding QMV to additional CFSP areas later on.

Keywords EU foreign policy – CFSP – Qualified majority voting - QMV – EU Council – Unanimity



Introduction

At the time of writing, the EU is reflecting on its future and how it should handle some of the biggest challenges that it is currently facing. This reflection is taking place in the framework of two processes, namely the Conference on the Future of Europe (CoFoE) and the Strategic Compass process, both of which are scheduled to conclude in Spring 2022. The former is a public consultation forum that is primarily, though not exclusively, focused on discussing the development and reform of internal EU policies and structures. The latter seeks to give specific guidance to the EU's security and defence policy. Both the CoFoE and the Strategic Compass process seek to strengthen the EU's sovereignty and enhance its resilience.

One proposal that is often brought up as a way to strengthen the effectiveness of the EU's external action is the extension of qualified majority voting (QMV) to the Union's Common Foreign and Security Policy (CFSP). As a union of 27 member states, the EU has often found it challenging to react quickly and effectively to international crises and challenges when they emerge, because the EU Council (i.e. national ministers) decides on CFSP matters by unanimity. This means that every member state must agree to a proposal for it to be adopted. The unanimity rule therefore grants every member state, regardless of its size or political weight, a veto over CFSP decisions. As a result, CFSP actions have often been slow to emerge or, when they do emerge, have been significantly watered down due to the need to take into consideration the concerns of even the most reluctant member state, the lowest common denominator. If the EU were to move away from the unanimity principle in CFSP by extending QMV to certain areas that it covers, it could bypass the lowest common denominator and raise the level of ambition of its external action.

In her first State of the Union address, in September 2020, European Commission President Ursula von der Leyen called for the EU to move to QMV, at least in the adoption of human rights statements and the establishment of sanctions regimes, in order to boost the effectiveness of its external action.¹ Although some EU member states, such as Germany and France, support the extension of QMV to CFSP, most remain ambivalent about or explicitly against the idea. Smaller member states in particular worry that QMV would increase

¹ U. von der Leyen, State of the Union Address given at the European Parliament plenary session, Brussels, 16 September 2020, SPEECH/20/1655.



the influence of larger countries at their expense, decrease their ability to shape the tone of EU foreign policy and put them in a position whereby they would have to accept decisions that might undermine their national interests. As a result, many smaller member states tend to argue that the unanimity rule should be preserved in CFSP to ensure that no member state can be outvoted in the Council on issues that are vital to its interests.

This paper makes a case for extending QMV to CFSP. It argues that QMV should be extended to CFSP to boost the resilience of the EU's foreign-policy system to third-country influence, to facilitate the emergence of a common European strategic culture and to mitigate the risk of the overall tone of common European foreign policy being set outside the EU. While the concerns of those member states that oppose QMV are mostly legitimate, the potential benefits of QMV in CFSP outweigh the costs. This is not to say introducing QMV to CFSP would be a silver bullet that would solve all the problems of EU external action in one shot. Even in areas in which QMV is already used, such as trade and budget issues, EU policymaking can still be slow and cumbersome if there are deep differences between the member states. However, extending QMV to CFSP would facilitate the normalisation of foreign policy as an EU competence and strengthen the resilience of the EU's foreign-policy system to third-country influence. It could also push the member states to think about international issues more from a broader European perspective than from 27 national ones. Over time, this could facilitate the emergence of a shared European strategic culture, and a common way of looking at the EU's place in the world and the threats and challenges that the Union is facing.

The rest of the paper is divided into five sections. The first section explains what QMV is and what the Treaty on European Union (TEU) says about the possibility of extending it to CFSP. The second provides an overview of the contemporary debate on extending QMV to CFSP and explains the positions of the protagonists and the antagonists in this debate. The third makes a case for extending QMV to CFSP and explains why the benefits of this outweigh the costs. The fourth provides recommendations on how the extension of QMV to CFSP could be taken forward to strengthen EU foreign policy. The fifth and final section concludes the paper and reflects on the future of EU foreign policy if QMV is not extended to CFSP. Regarding data, this paper relies on a mixture of primary and secondary sources. The primary sources include official EU documents, communications by EU leaders and news articles. The secondary sources include the existing literature on QMV in EU foreign policy.



QMV in EU foreign policy

Qualified majority voting is one of three voting methods used in the EU Council.² When the Council is acting upon a proposal by the Commission or the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP), a qualified majority—also known as the ‘double majority’ rule—is reached if the proposal is supported by at least 55% of the EU’s 27 member states (i.e. at least 15 of them) and if the supporting member states collectively represent at least 65% of the Union’s population. Abstentions count as votes against the proposal. When the Council is not acting upon a proposal by the Commission or the HR/VP, the percentages required for the proposal’s adoption are somewhat different, namely 72% of votes in favour, representing 65% of the EU’s population.

Given the above percentages, using QMV has several implications. First, no one EU member state can veto a proposal if others support it. When QMV is used, a proposal needs to be opposed by at least four member states, collectively representing at least 35% of the EU’s population, to acquire a ‘blocking minority’.³ Second, adopting a proposal by QMV requires more than the support of a simple majority of Council members. The EU is currently composed of 27 member states, which means that a simple majority would be 14 countries instead of the 15 that QMV requires. Third, given the additional requirement that the supporting member states need to collectively represent at least 65% of the EU’s population, QMV increases the influence of those member states that have large populations vis-à-vis those that have smaller ones. This is because it is easier for a proposal to reach the 65% requirement if it is supported by populous countries such as Germany, France and Italy. Conversely, it is harder for a proposal to be adopted if it is not supported by those member states. In other words, the larger a member state’s population, the greater its influence when the Council is acting by QMV.

QMV is already the most widely used voting method in the Council: about 80% of all EU legislation is currently adopted using this procedure under the Union’s existing legal framework based on the TEU and the Treaty on the Functioning of the European Union (TFEU).⁴ QMV is used in a wide range of policy areas such as the single market, trade policy, development cooperation, the Common Agricultural Policy and adopting the EU

² The other two are unanimity and simple majority. Unanimity is used in sensitive policy areas such as foreign, security and defence policy, whereas simple majority is used on procedural matters and to request that the European Commission submit a study or a proposal.

³ Council of the EU, ‘Qualified Majority’ (last reviewed 23 March 2020).

⁴ Ibid.



budget. When the 2007 Lisbon Treaty entered into force in December 2009, it expanded the use of QMV further, introducing it to areas such as external border controls, asylum and immigration, judicial cooperation, police cooperation, the creation of European intellectual property rights, space policy, energy policy and humanitarian aid.⁵ However, this does not mean that the Council acts by QMV automatically whenever it is deciding on something that falls within these areas: there is a general preference among the member states to act by consensus to ensure that no Council member is outvoted. Acting by QMV therefore tends to be a measure of last resort that is used in the Council only if consensus-building efforts among the member states have failed.

As the above paragraph implies, the Council already acts by QMV in certain foreign-policy-related areas. This is because, since the entry into force of the Lisbon Treaty, the EU has used its ordinary legislative procedure (i.e. the ‘community method’) to decide on most external relations issues as well as on those internal policy issues that have an external dimension (e.g. immigration, asylum and trade). Under the ordinary legislative procedure, the European Commission proposes a piece of legislation to the Council and the European Parliament (EP); the Council and the EP adopt the proposal as co-legislators on the first or second reading, unless a third one is required; and the Council acts by QMV when adopting the proposal.⁶ The Commission and the European Court of Justice together ensure that the member states comply with decisions taken under the ordinary legislative procedure. Since this procedure is used in areas such as immigration, asylum, trade, development, and enlargement and neighbourhood policy, both the European Commission and the EP are already actors in EU foreign policy.

One of the few EU policy areas in which QMV is not used is CFSP, the Union’s primary framework for collective external action. Given the special sensitivities involved in this area, which deals with what the late American political scientist Stanley Hoffman described as ‘high politics’,⁷ the Council decides on CFSP issues by unanimity: every member state needs to support a proposal for it to be adopted. This means that every member state, regardless of its size or political weight, can veto foreign policy proposals. This has been the case ever since European-level foreign-policy cooperation first began in the 1970s as an informal foreign ministers’ club in the form of the European Political Co-

⁵ EUR-Lex, ‘Qualified Majority Voting and the Ordinary Legislative Procedure’ (24 November 2015).

⁶ Council of the EU, ‘The Ordinary Legislative Procedure’ (last reviewed 11 February 2021).

⁷ S. Hoffmann, ‘Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe’, *Daedalus* 95/3 (Summer 1966), 862–915.



operation, the CFSP's predecessor. It continues to be the case today: the 1992 Maastricht Treaty, its Amsterdam and Nice revisions, and the 2007 Lisbon Treaty all preserved the unanimity rule in EU foreign and security policy. The CFSP is also an area in which the Council dominates: it is an intergovernmental playground for the member states, in which the European Commission, the EP and the European Court of Justice have very limited say.

There are some strictly defined CFSP areas in which the TEU already enables the Council to use QMV. These areas are listed in Article 31(2) TEU: when (1) adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives; (2) adopting a decision defining a Union action or position, based on a proposal which the HR/VP has presented following a specific request from the European Council, made on its own initiative or on that of the HR/VP; (3) adopting any decision implementing a decision defining a Union action or position; and (4) appointing EU special representatives. In all other CFSP areas, unanimity is required.

However, it is possible to extend QMV to additional CFSP areas within the framework of the existing treaties. This is because the TEU contains two general passerelle clauses in Article 48(7), and between the TEU and TFEU there are a further six specific ones that allow the EU to modify the decision-making rules used in the Council without treaty change.⁸ The specific passerelle clauses are Article 31(3) TEU for CFSP, Article 81(3) TFEU for family law, Article 153(2) TFEU for social policy, Article 192(2) TFEU for environmental policy, Article 312(2) TFEU for adopting a regulation laying down the Multiannual Financial Framework and Article 333 TFEU for enhanced cooperation. Article 31(3) TEU, the CFSP passerelle clause, states that '(t)he European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to' in Article 31(2), that is, in cases other than those CFSP areas where QMV is already permitted. This does not apply to issues that have military or defence implications, which need to be decided unanimously without exception under the EU's existing legal framework. Extending QMV to additional CFSP areas is therefore possible if the EU heads of state and government were to decide so unanimously. Some governments, however, such as the German and Danish ones, would also have to obtain national parliamentary consent to use the CFSP passerelle clause.⁹

If QMV was extended to CFSP, the TEU contains a built-in emergency-brake clause that member states could use if they felt that a foreign policy proposal being adopted by qualified

⁸ S. Kotanidis, *Passerelle Clauses in the EU Treaties: Opportunities for More Flexible Supranational Decision-Making*, European Parliamentary Research Service, Study PE 659.420 (December 2020).

⁹ L. Schuette, *Should the EU Make Foreign Policy Decisions by Majority Voting?*, Centre for European Reform, Policy Brief (May 2019).



majority would undermine their national interests.¹⁰ This emergency brake is outlined in Article 31(2) TEU, which states that '(i)f a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken.' In such a situation, the HR/VP would be expected, in close consultation with the member state in question, to 'search for a solution acceptable to it'. If the HR/VP fails in this effort, Article 31(2) then states that 'the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.' This means that, even if QMV was to be extended to additional CFSP areas, unanimity-based decision-making might not disappear from those areas completely: it might simply move from the ministerial level to the level of heads of state or government.

The contemporary debate

The idea of extending QMV to CFSP has become a whack-a-mole issue that resurfaces virtually every time the EU is slow or unable to respond to an international crisis or challenge.¹¹ The proponents of QMV argue that abandoning the unanimity principle in CFSP would enable the EU to become a more effective international actor as no one country would be able to veto or water down the Union's foreign-policy decisions. The idea resurfaced most recently in spring 2021 after Hungary blocked two EU statements, one criticising China for cracking down on Hong Kong,¹² and another calling for a ceasefire between Israel and the Palestinians.¹³ Budapest's behaviour caused frustration, especially in Berlin: in June German Foreign Minister Heiko Maas observed that allowing the EU to 'be held hostage by the people who hobble European foreign policy with their vetoes', sooner or later, risks 'the cohesion of Europe'.¹⁴ For this reason, Maas argued that '(t)he veto has to go, even if that means we [Germany] can be outvoted'.

¹⁰ T. Lațici, *Qualified Majority Voting in Foreign and Security Policy: Pros and Cons*, European Parliamentary Research Service, Briefing PE 659.451 (January 2021), 3.

¹¹ See, e.g. D. M. Herszenhorn, 'Venezuela's Chaos Exposes EU Disarray on Foreign Policy', *Politico*, 4 February 2019.

¹² H. von der Burchard and J. Barigazzi, 'Germany Slams Hungary for Blocking EU Criticism of China on Hong Kong', *Politico*, 10 May 2021.

¹³ *Euractiv*, 'Hungary Blocks EU Declaration on Israel–Palestine Ceasefire', 19 May 2021.

¹⁴ A. Brzozowski, 'Germany Slams "Hostage-Taking" of EU's Foreign Policy', *Euractiv*, 7 June 2021.



Together with France, Germany has been calling for the EU to move to QMV in CFSP for some time. In June 2018, for example, during a meeting of the Franco-German Council of Ministers in Meseberg, Paris and Berlin agreed *inter alia* to ‘look into new ways of increasing the speed and effectiveness of the EU’s decision making’ in CFSP.¹⁵ To this end, they agreed that the EU ‘should also explore possibilities of using majority vote in the field of the Common Foreign and Security Policy in the framework of a broader debate on majority vote regarding EU policies.’ If Armin Laschet, the leader of the Christian Democratic Union of Germany (Christlich Demokratische Union Deutschlands) and current front-runner to succeed Angela Merkel, becomes chancellor after the September 2021 Bundestag elections, Berlin’s tone on QMV will remain the same: he also thinks that the EU should move to QMV in foreign policy.¹⁶ France’s view on the extension of QMV to CFSP is somewhat more nuanced than Germany’s. Like Berlin, Paris supports it, but wants to link it to a parallel extension of QMV to EU tax policy.¹⁷

In addition to Germany and France, the European Commission has been one of the leading advocates of extending QMV to CFSP in recent years. The Commission can see that the EU’s unanimity-based foreign-policy decision-making hampers the Union’s ability to act effectively on the world stage at a time when volatility in its neighbourhood continues to be high and geopolitical competition has intensified. For these reasons, in 2018 then Commission President Jean-Claude Juncker argued that it was time for the EU to develop its *Weltpolitikfähigkeit*, which he defined as the EU’s ‘capacity to play a role, as a Union, in shaping global affairs.’¹⁸ To this end, the Juncker Commission proposed that the EU should move to QMV in three CFSP areas: (1) the adoption of EU positions on international human rights questions, (2) the establishment of sanctions regimes, and (3) all decisions regarding civilian CSDP (Common Security and Defence Policy) missions.¹⁹ The Juncker Commission invited EU leaders to endorse this proposal at a meeting on the EU’s future in Sibiu, Romania in May 2019. However, the proposal was unsuccessful: the leaders’ Sibiu Declaration did not even mention the idea of extending QMV to CFSP.²⁰

The extension of QMV to CFSP has also been high on the agenda of the current Commission led by President Ursula von der Leyen, who succeeded Juncker in December 2019. One of von der Leyen’s ambitions is to lead a ‘Geopolitical Commission’ that would push the

¹⁵ Germany, Federal Government, ‘Meseberg Declaration’ (19 June 2018).

¹⁶ G. Chazan, ‘Armin Laschet Calls for “Proactive” German Foreign Policy’, *Financial Times*, 19 May 2021.

¹⁷ N. Koenig, *Qualified Majority Voting in EU Foreign Policy: Mapping Preferences*, Jacques Delors Centre, Hertie School, Policy Brief (10 February 2020), 4.

¹⁸ J.-C. Juncker, ‘State of the Union 2018: The Hour of European Sovereignty’, address to the European Parliament plenary session, 5.

¹⁹ European Commission, *A Stronger Global Actor: A More Efficient Decision-Making for EU Common Foreign and Security Policy*, Communication, COM (2018) 647 final (12 September 2018).

²⁰ European Council, ‘The Sibiu Declaration’, Press release (9 May 2019).



EU to become a more assertive and effective international actor, which is what Juncker had wanted and referred to as *Weltpolitikfähigkeit*. In her mission letter to HR/VP Josep Borrell, von der Leyen explained that the EU ‘must overcome unanimity constraints that hamper our foreign policy.’²¹ She encouraged Borrell to ‘seek to use the clauses in the Treaties that allow certain decisions on the common foreign and security policy to be adopted by qualified majority voting’ when putting forward proposals as HR/VP. Moving away from unanimity in CFSP is something that von der Leyen advocated even as German defence minister before becoming Commission president.²² Borrell has taken these instructions to heart: he has been a strong proponent of extending QMV to CFSP since the European Council appointed him as Federica Mogherini’s successor in 2019. During his confirmation hearing in the EP in October 2019, Borrell indicated that he supported the Juncker Commission’s plan for the extension of QMV to human rights issues, sanctions regimes and EU peacekeeping missions.²³ In 2020 Borrell reiterated the idea that the EU should be able to decide on peacekeeping missions by QMV: he told a German weekly that unanimity must remain the rule when soldiers are being sent into combat, but asked whether the principle must also be used when the EU is deciding on less-sensitive peacekeeping missions.²⁴

In her first State of the Union address, in September 2020, Commission President von der Leyen followed in Juncker’s footsteps by also raising the issue of extending QMV to EU foreign policy. Frustrated by the inefficiency of the EU’s external action, she asked Members of the European Parliament: ‘(w)hy are even simple [foreign policy] statements on EU values delayed, watered down or held hostage for other motives?’²⁵ To fix the situation, von der Leyen called for the EU to move to QMV in foreign policy ‘at least on human rights and sanctions implementation’.²⁶ This was also the part of her speech that received the loudest applause from the assembled parliamentarians. It is worth noting that von der Leyen’s QMV proposal is somewhat less ambitious than Juncker’s as it does not include extending QMV to decisions relating to civilian CSDP missions. The likely reason for this is that using QMV in CSDP, albeit only for its civilian

²¹ European Commission, ‘Josep Borrell: High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission’, Mission letter (1 December 2019).

²² *Reuters*, ‘EU Considering Majority Voting on Foreign Affairs Decisions: Germany’, 28 February 2018.

²³ European Parliament, ‘Hearing of Josep Borrell, High Representative / Vice-President-Designate, A Stronger Europe in the World’ (25 September 2019).

²⁴ M. Becker, C. Hoffmann and P. Müller, “Wir müssen unsere Interessen stärker durchsetzen - notfalls robust”, *Der Spiegel*, 4/2020, 17 January 2020.

²⁵ U. von der Leyen, State of the Union Address to the European Parliament plenary session.

²⁶ *Ibid.*



side, would be too uncomfortable for most member states given that CSDP decisions often send soldiers and civilians to dangerous parts of the world where their lives could be at risk. As Jolyon Howorth wrote in 2000, ‘one cannot send young men to die in a foreign field by qualified majority voting.’²⁷

The EP is another strong advocate of extending QMV to CFSP and has been raising the issue for years. In 2013, it recommended that the HR/VP, the Commission and the Council ‘envisage the possibility of qualified majority voting on CFSP matters, as laid down in Article 31(2) TEU, and . . . formally explore the broadening of qualified majority voting on CFSP matters by means of the respective passerelle clause’.²⁸ More recently, in its 2020 report on the implementation of CFSP, the EP expressed regret for ‘the lack of progress in improving the decision-making process on CFSP matters, which impacts the efficiency, speed and credibility of EU action and decision-making on the international scene’.²⁹ It also called on the member states ‘to urgently open a debate on the possibility of moving from unanimity to qualified majority voting at least in selected areas of CFSP, such as decisions on human rights issues and sanctions, as a concrete means by which to strengthen the EU’s influence on the global scene’.³⁰

So far, however, all calls for extending QMV to CFSP have received the cold shoulder from the Council. This is because most EU member states are either against or ambivalent about the idea. According to Nicole Koenig, only 6 member states are unreservedly in favour of QMV in EU foreign policy, 10 are ambivalent or sceptical about it, and the remaining 11 are explicitly against it.³¹ This means that more EU capitals oppose moving away from the unanimity principle in CFSP than support it. It is unsurprising therefore that European Council President Charles Michel, who chairs the meetings of EU heads of state and government, has also spoken in defence of the unanimity principle in CFSP. Following von der Leyen’s 2020 State of the Union address, Michel gave a speech in which he argued *inter alia* that the unanimity rule in EU foreign policy ‘promotes a lasting commitment by the 27 countries to the strategies which have been developed together.’³²

²⁷ J. Howorth, *European Integration and Defence: The Ultimate Challenge?*, Western European Union Institute for Security Studies, Chaillot Paper 42 (November 2000), 82.

²⁸ European Parliament, *2013 Review of the Organisation and Functioning of the EEAS*, P7_TA(2013)0278 (13 June 2013).

²⁹ European Parliament, *Implementation of the Common Foreign and Security Policy—Annual Report 2020*, P9_TA(2021)0012 (20 January 2021).

³⁰ *Ibid.*

³¹ Koenig, *Qualified Majority Voting in EU Foreign Policy*, 3.

³² C. Michel, ‘Strategic Autonomy for Europe—The Aim of Our Generation’, speech to the Bruegel think tank, 28 September 2020.



Most of the opposing member states are smaller countries from Central and Eastern Europe, although the group also includes Southern European countries such as Greece and Cyprus.³³ They are against extending QMV to CFSP because it would strengthen the influence of larger member states, which causes them to worry that they might be outvoted on issues vital to their national interests. However, not all smaller member states oppose QMV in CFSP: Finland, Sweden, Belgium and the Netherlands support it because they can see that the rewards it would bring for EU foreign policy outweigh the potential risk of being outvoted. The Finnish government's 2021 White Paper on EU policy notes that '(t)he swiftness and credibility of the EU's common foreign and security policy can be improved by increasing the use of qualified majority decision-making and the principle of constructive abstention.'³⁴ During Finland's Autumn 2019 EU Council Presidency, Sauli Niinistö, the president of the Finnish Republic, also stated that he strongly supports strengthening the EU's CFSP 'even at the risk that it would reduce the powers of the President of the Republic', adding that Finland needs 'to strive for a common European voice and joint European deeds', both during its Council Presidency and as a regular Council member.³⁵ Although Niinistö did not elaborate on precisely what he meant, the statement can only mean that he supports extending QMV to CFSP given the constitutional division of labour between the President of the Finnish Republic and the government in Finland's foreign policy.³⁶

So far, however, even watered-down proposals to extend QMV to EU foreign policy have been stonewalled in the Council. In March 2020, the Commission and the HR/VP proposed that the European Council should adopt a decision 'identifying the strategic interests and objectives of the Union' pursuant to Article 22(1) TEU 'through the EU Action Plan on Human Rights and Democracy 2020–

³³ Koenig, *Qualified Majority Voting in EU Foreign Policy*, 3.

³⁴ Finland, Government, *Government Report on EU Policy: Strong and United EU—Towards a More Sustainable European Union* (28 January 2021).

³⁵ Finland, President of the Republic, speech by President of the Republic Sauli Niinistö at the Ambassadors' Conference on 20 August 2019.

³⁶ Under Chapter 8, Section 93 of Finland's current constitution, which entered into force in 2000, '(t)he foreign policy of Finland is directed by the President of the Republic in co-operation with the Government.' In practice, this has been implemented as the government taking the lead in EU foreign-policy matters and the president overseeing Finland's relations with great powers. Extending QMV to EU decisions on sanctions, however, would impact the president's field of responsibility given the possibility that the EU could use QMV to impose sanctions on Russia. This would de facto reduce the powers of the president, which is why Niinistö's statement has been interpreted as an expression of support for QMV in CFSP.



2024'.³⁷ This would enable the Council to act by qualified majority on issues related to the implementation of the new Action Plan, thereby boosting the speed and effectiveness of EU decision-making on human rights issues. However, the proposal was rejected by the Foreign Affairs Council in November 2020.³⁸ HR/VP Borrell explained after the meeting that, although the member states had not agreed to this 'modest' proposal yet, he would continue to push the issue of extending QMV to the implementation of the EU's Action Plan on Human Rights and Democracy to make the Union's decision-making more efficient. In his view, the extension of QMV was likely to be possible soon, as 'things are moving in this direction'.³⁹

Despite these setbacks, the idea of extending QMV to CFSP has proven to be resilient: certain member states and EU leaders continue to push for it in different forums. The idea is also being discussed in the context of the EU's Strategic Compass process, which seeks to (a) fix a perceived gap between the Union's level of ambition in the field of security and defence and what the EU actually does; (b) provide political direction to post-2016 initiatives such as the European Defence Fund and Permanent Structured Cooperation; (c) facilitate the emergence of a common strategic culture among the member states; and—most concretely—(d) develop goals and targets that will guide the development of EU security and defence cooperation until 2030. The Strategic Compass process, which will conclude in March 2022, focused on strategic dialogue in the first half of 2021. During this phase, the member states put forward and discussed different ideas and proposals for strengthening the EU's security and defence policy. One of the many ideas discussed was the possibility of extending QMV to areas of CSDP that are not military or defence related, which would be possible without a treaty change under Article 31(3). In March 2021, the Netherlands and Spain also published a non-paper on the EU's strategic autonomy, which noted *inter alia* that it could be useful 'to explore in which areas the extension of qualified majority voting is possible, limiting—where possible and desirable—the instances where unanimity hampers the EU's capability to act'.⁴⁰ According to these member states, extending QMV to EU foreign policy would strengthen the EU's ability to defend its public interests and increase its open strategic autonomy.

The idea of extending QMV to CFSP is also being discussed in the framework of the CoFoE, a one-year public consultation forum for debating how the Union should tackle challenges in various policy fields. Its inauguration ceremony was held in Strasbourg in May 2021, and it is scheduled to conclude during the French EU Council Presidency in

³⁷ European Commission, 'Joint Proposal for a recommendation of the Council to the European Council on the adoption of a decision identifying the strategic objectives of the Union to be pursued through the EU Action Plan on Human Rights and Democracy 2020–2024', JOIN (2020) 6 final (25 March 2020).

³⁸ *Euobserver*, 'EU States Reject "Modest" Change on Foreign Policy Votes', 20 November 2020.

³⁹ Council of the EU, 'Press Conference – Part 4 (Q&A)' (19 November 2020).

⁴⁰ Netherlands, Permanent Representation to the EU, *Spain–Netherlands Non-Paper on Strategic Autonomy While Preserving an Open Economy* (24 March 2021),



Spring 2022. In April, the Commission launched a multilingual digital platform that allows citizens to put forward their ideas and proposals on how the EU should develop. The platform includes 10 broad discussion topics, one of which is ‘EU in the world’. This is where EU citizens can express their views on and discuss the future of the EU’s foreign and security policy. At the time of writing, there are already multiple proposals on the platform for extending QMV to EU foreign and security policy in various ways. Some of the proposals are modest, calling for QMV to be extended to those areas that the Commission has already proposed.⁴¹ Others are more ambitious, and some are unimplementable under the EU’s existing legal framework. These include moving to QMV in all areas of EU foreign and security policy,⁴² in arms embargo decisions,⁴³ in decisions on the deployment of EU battlegroups⁴⁴ and even in decisions on possible EU air strikes.⁴⁵ Regardless of the feasibility of these proposals, they show that increasing the effectiveness of CFSP—which enjoys broad public support⁴⁶—is important not only to EU leaders and some member states. The final recommendations document that the CoFoE will produce will therefore have to address the issue of QMV in EU foreign policy.

The case for QMV

Although the idea of extending QMV to CFSP continues to be contentious in the Council, work on facilitating its acceptance should continue. This is because the benefits of extending QMV to even a limited number of non-executive CFSP areas outweigh the costs for the member states. The reasons for this are sixfold. First, QMV would strengthen the resilience of the EU’s foreign-policy system to third-country influence. One of the main deficiencies of unanimous decision-making in CFSP is that it provides an indirect avenue for influential third countries that have developed close economic and political ties to certain member states

⁴¹ V. Rodríguez Prieto, ‘Overcoming Unanimity’, Conference on the Future of Europe (20 May 2021).

⁴² L. Martin, ‘Acting as One: EU as a Global Actor’, Conference on the Future of Europe (19 April 2021).

⁴³ L. E. M. Canovas, ‘A True European Defense Market and Arms Export Policy’, Conference on the Future of Europe (20 April 2021).

⁴⁴ L. E. M. Canovas, ‘Reforming the EU Battlegroups for Better EU Crisis Management’, Conference on the Future of Europe (21 April 2021).

⁴⁵ P. Heyndrickx, ‘The Common Foreign and Security Policy (CFSP): The Next Step’, Conference on the Future of Europe (10 May 2021).

⁴⁶ European Commission, ‘Europeans’ Opinions About the European Union’s Priorities’, *Standard Eurobarometer 93* (Summer 2020), 114.



to undermine the functioning of EU foreign policy. As every member state has a veto over CFSP decisions, third countries can encourage friendly EU member states to act as ‘Trojan horses’ in the Council to veto or water down CFSP proposals/statements that undermine their interests. If the Council was to adopt such proposals/statements by QMV, it would be harder for third countries to throw a spanner into the EU’s foreign-policy system as no one member state could block them. This would strengthen the EU’s decision-making autonomy and the sovereignty of the Union as an international actor.

Second, extending QMV to CFSP would facilitate the development of a common strategic culture among the member states. Since the days of the European Political Co-operation, EU-level foreign policymaking has been driven by a culture of consensus among the member states, which has enabled the Union to act on the world stage despite the unanimity principle. However, in recent years, this culture has been eroded due to several factors, *inter alia*, the migration crisis, rule of law disagreements, and tensions between Southern and Eastern members over priorities. As a result, EU member states seem to be less willing to compromise on CFSP issues than they used to be. The continuing use of the unanimity principle in CFSP also means that those member states that do not have an interest in common EU action on a given issue also have no interest in compromising, which tends to make EU foreign policy slow or non-existent. Extending QMV to CFSP would therefore push EU member states to view foreign-policy challenges more from a common European perspective than from 27 national ones. This could facilitate quicker and more effective EU action and strengthen solidarity among the member states.

Third, moving to QMV would also be in the interests of smaller EU member states because it would ensure that they would continue to have a say over the formulation of common European foreign policy. If the EU is unable to act as a whole when Europe is confronted by international crises and challenges, there is a risk that the responsibility for common European foreign policymaking could shift to various mini-lateral forums in which smaller countries usually do not have a seat. An example is the French, British and German E3 group, which has played an important role in the talks with Iran on its nuclear weapons programme. Due to the post-Brexit UK’s current unwillingness to participate in EU foreign and security policy cooperation as a third country, the E3 group has gained increased prominence as a forum for autonomous European foreign and security policy cooperation among the three leading European powers. Its activities have also expanded to new areas: the first-ever meeting of E3 defence ministers was held in August 2020.⁴⁷ From the perspective of smaller countries, this phenomenon is negative because it means that the overall tone of common European foreign policy might no longer be set by the EU. Extending QMV to CFSP would therefore

⁴⁷ Germany, Federal Ministry of Defence, ‘First Meeting of Defence Ministers of E3 Countries’, Press release (18 August 2020).



be a way for smaller countries to mitigate this risk because it would boost the effectiveness of EU decision-making, thereby reducing the incentives for bigger EU countries to take decisions outside CFSP.

Fourth, extending QMV to CFSP does not automatically imply that larger member states would be able to dictate the tone of EU foreign policy to their smaller peers. In areas where QMV is already the norm, smaller member states tend to form influential coalitions that enable them to push back against the influence of Paris and Berlin, sometimes even frustrating their ambitions. In addition, the emergency-brake clause in Article 31(2) TEU allows member states to call a ‘time-out’ in the Council if they feel that a CFSP proposal that is being decided by QMV would undermine their national interests. In such a case, the HR/VP would be tasked with searching for a compromise solution that would be acceptable to the member state in question. If the HR/VP fails, the Council may decide by QMV to refer the issue up to the European Council, where the heads of state and government would decide on it by unanimity. In other words, the TEU has a built-in safety mechanism that could be used if a member state were to feel that its national interests would be undermined by a CFSP proposal that would be decided by QMV.

Fifth, those CFSP areas to which Commission President von der Leyen has called for QMV to be extended are no more or less sensitive than many of the areas in which QMV is already the norm. As was pointed out above, the Council currently uses QMV to adopt approximately 80% of all EU legislation. It is used both in conventional ‘low politics’ areas such as trade and agricultural policy as well as in ‘high politics’ areas such as border control, and judicial and police cooperation, to name just a few. From a traditional international security perspective, some of these areas relate more directly to national sovereignty and to ideas about what it means to be a ‘state’ than the adoption of EU statements on international human rights questions, for example. This means that the often-repeated argument that QMV cannot be extended to CFSP because the issues that are covered in its framework are inherently more sensitive than non-CFSP issues does not stand up to scrutiny, at least with respect to the extension of QMV to the adoption of EU human rights statements.

Sixth, extending QMV to CFSP would also be in the interests of those member states that have vetoed or watered down CFSP proposals in the past. This is because they would no longer have to choose between showing solidarity with their EU partners and looking out for their relations with influential third countries. Extending QMV to the adoption of EU statements on international human rights



questions, for example, would allow those member states that might currently worry about the consequences of a proposed human rights statement on their bilateral relations with a third country to voice their concerns in the Council without having to think about the political cost that they would incur at the EU level if they blocked that statement. This would simplify bilateral relations with influential third countries such as China: the member state in question could tell the third country that it had criticised the proposal in the Council but could ultimately do nothing about the human rights statement given that it was adopted by QMV. Extending QMV to CFSP would also make it less likely that outlier member states would be publicly named and shamed by their peers as Hungary was by Germany in June 2021 when it vetoed an EU statement on China. This could reduce political tensions between the member states in foreign policy.

The way forward

Given the sizeable number of EU capitals that continue to oppose the extension of QMV to CFSP, the European Council is unlikely to agree to Commission President von der Leyen's 2020 proposal in its entirety in the near future. However, this does not mean that those calling for a more effective and more resilient EU foreign policy should lose faith in their efforts and stop trying. If bigger member states could provide sufficient guarantees to smaller ones that an extension of QMV to CFSP would not mean that they would be outvoted on issues vital to their national interests, and if bigger member states could also provide guarantees to their smaller peers that they would show more solidarity regarding their concerns, then a modest extension of QMV to CFSP could be possible.

This could be the proposed extension of QMV to the adoption of EU statements on international human rights questions. Although it would not significantly enhance the EU's ability to act on the world stage, it would nevertheless strengthen the resilience of the Union's foreign-policy system against third-country influence and help to build confidence and trust among the member states regarding the use of QMV in foreign policy more broadly. Its main value would therefore be in its function as a test case that would allow the member states to experience how QMV in CFSP would work in practice, how it would affect their individual influence on EU human rights statements and how it would impact their national foreign policies vis-à-vis third countries. If the experience was positive—or at least not negative—for the member states, then it could become possible for QMV to 'spill over' into other CFSP areas further down the road, for instance, to the imposition of sanctions regimes and the deployment of civilian CSDP missions.



To facilitate the acceptance of QMV in CFSP among the opposing EU capitals, there are three things that can be done by its supporters in addition to waiting for more open-minded governments to take office in those capitals. First, they should keep raising the issue every time internal disagreements in the Council stand in the way of robust and effective EU external action, especially when the question is about EU statements on international human rights violations. By doing so, the supporters of QMV in CFSP keep the issue high on the EU's agenda and ensure that it is discussed at the national level in the various member states. This happens because the media tend to pick up on the issue, as we have seen, and to cover it at both the European and the national level. This ensures that there is steady pressure on EU governments to find ways to boost the effectiveness and resilience of EU foreign policy. The ongoing CoFoE and Strategic Compass process provide additional avenues for the supporters of QMV in CFSP to put pressure on the opposing member states.

Second, bigger EU member states should provide assurances to smaller ones that they would show greater solidarity with their specific national foreign and security policy concerns should it be agreed to use QMV in CFSP. In addition to worrying about the consequences of potentially being outvoted on an issue that is important to them, some smaller member states oppose the extension of QMV to CFSP because they feel that the bigger member countries do not show sufficient concern for their national security priorities at the EU level. An example that is often brought up is Germany: some EU capitals feel that Berlin has not shown sufficient solidarity with Central and Eastern European countries on issues such as Russia and the construction of the Nord Stream 2 pipeline, or towards Southern European countries over Turkey's energy exploration activities in the territorial waters of Greece and Cyprus. In their view, the absence of sufficient solidarity makes it difficult for them to agree to even a modest extension of QMV to CFSP, given that the biggest beneficiaries of it would be populous member states such as France and Germany. For this reason, France's support for Greece and Cyprus in 2020 during their confrontation with Turkey in the Eastern Mediterranean was encouraging because such support may alleviate smaller member states' worries that their foreign and security policy concerns would be overlooked if CFSP decisions were taken by QMV. Thus to reduce opposition to QMV, bigger member states should provide similar support to their smaller peers whenever they are confronted by crises or challenges that affect them disproportionately more than other EU countries.

Third and finally, the supporters of a more effective EU foreign policy should also push for greater use of 'constructive abstention', which is a less politically



sensitive alternative to QMV in CFSP and CSDP. Under Article 31(1) TEU (formerly Article 23(1) TEU), any member state may abstain from a CFSP or CSDP decision by making a formal declaration of its intention to do so. In such a case, the abstaining member state is not obliged to apply the decision in question. However, it would still accept that the decision commits the EU, and would be expected to refrain ‘from any action likely to conflict with or impede Union action based on that decision’. This is what makes the abstention ‘constructive’: a member state can distance itself from a CFSP or CSDP decision without derailing the EU’s decision-making process. If the abstaining countries represent less than one-third of the member states and less than one-third of the EU’s population, the Council can take the decision. So far, constructive abstention has been used only once, namely in 2008 when Cyprus abstained from the Council’s decision to establish EULEX Kosovo, a civilian rule of law mission.⁴⁸ It should be used more frequently because it allows outlier member states to distance themselves from a proposed CFSP action without having to veto it. This would allow these states to communicate to influential third states that they are sensitive to the concerns of those third states, and avoid them being named and shamed in public by their peers because they would not be blocking the EU from acting.

Conclusion

This paper has provided an overview of the contemporary debate on extending QMV to CFSP, explained how the extension could be achieved in practice under the CFSP’s existing legal framework and provided recommendations on what could be done to facilitate acceptance of the idea among EU member states. Most member states remain either ambivalent about or explicitly opposed to the extension of QMV to CFSP. Thus, the European Council is unlikely to agree to it in the near future along the lines that Commission President von der Leyen proposed in 2020, that is, that the EU should move to QMV in the adoption of statements on international human rights questions and sanctions regimes. Although the TEU contains a built-in emergency-brake clause for the use of QMV in CFSP, the opposing member states, most of which are small and medium-sized countries from Central and Eastern Europe, continue to worry that QMV in CFSP would give carte blanche to more populous countries, such as France and Germany, to dictate the overall tone of EU foreign policy.

Despite such concerns, this paper has argued that extending QMV to CFSP would be in the interests of all member states. This is because it would strengthen the resilience of the EU’s foreign-policy system to third-country influence, boost the overall effectiveness of the Union’s external action, and mitigate the risk that the main responsibility for common

⁴⁸ R. Goldirova, ‘EU Kosovo Mission to Start Saturday Morning’, *Euobserver*, 14 February 2008.



European foreign policymaking would move away from the EU to mini-lateral forums, such as the E3 group, at which smaller member states do not usually have a seat. Despite persistent opposition to the idea in the Council, the paper has also argued that a more limited extension of QMV could be possible soon if its supporters continue to raise the issue whenever the Union is slow to respond to international crises and challenges. Other factors necessary for this extension would be guarantees for the smaller member states from their larger peers that their national concerns would not be overlooked, and the strengthening of solidarity provision within the Union. The most likely scenario is that the EU will move to QMV in the adoption of statements on international human rights questions. This would be a symbolic step and would not significantly enhance the EU's ability to act on the world stage. However, it would nevertheless be a useful test case that would allow EU capitals to experience how QMV in CFSP would work in practice in an area that has limited implications for national foreign policies. Most importantly, it would help to build trust and confidence among the member states, both towards each other and in the use of QMV in CFSP. Over time, some of the reluctant member states might discover that QMV in CFSP is not the chimera that some of them worry it might be, which could later facilitate its extension to additional areas.

In the long term, the EU cannot avoid moving to more majoritarian decision-making in foreign policy if it wants to strengthen the credibility of its external action and become a geopolitical actor. Under its existing unanimity-based decision-making rules in CFSP and CSDP, the EU continues to act more as a loose confederacy than a genuine Union. The consequences of this are that EU action is often slow to materialise due to frequent political disagreements between the member states and the need to take on board the concerns of even the most reluctant member state, and a lack of resilience in the EU's foreign-policy system to third-country influence. This makes it challenging for the EU, a loose collective actor in security and defence, to play geopolitics at the same level as unitary great powers such as the US, Russia and China. For a collective actor, unanimity-based decision-making in foreign policy is therefore a structural weakness that its rivals can exploit to their advantage.

This structural weakness of collective actors has been known and exploited since ancient times. Its existence was recognised in Thucydides' *History of the Peloponnesian War*, written in the fifth century BC. When responding to the Spartan ultimatum on the Megarian decree, Pericles tells his fellow Athenians that



[i]n a single battle the Peloponnesians and their allies could stand up to all the rest of Hellas, but they cannot fight a war against a power unlike themselves, so long as they have no central deliberative authority to produce quick decisive action, when they all have equal votes, though they all come from different nationalities and every one of these is mainly concerned with its own interest—the usual result of which is that nothing gets done at all, some being particularly anxious to avenge themselves on an enemy and others no less anxious to avoid coming to any harm themselves.⁴⁹

Over two thousand years later, the EU is having to deal with the exact same challenges as the Spartans and their allies in the war against Athens: difficulty with acting rapidly, conflicting interests and vetoes. Sparta and its allies of course ultimately triumphed over Athens in the Peloponnesian war, but this was mainly due to poor Athenian military choices, the weak physical state of Athens at the end of the war following a plague and a Persian intervention. The EU cannot afford to proceed based on the hope that its adversaries on the world stage might make strategic mistakes or that their internal resilience might be tested by unexpected shocks. Nor can it assume that it will always receive help from a friendly great power. Therefore there is no alternative to extending QMV to CFSP in the long term. It is time to make it so.

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⁴⁹ Thucydides, *History of the Peloponnesian War* (London: Penguin Books, 1972), 120.



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About the author

Dr Niklas Novák, Ph.D., is a Senior Research Officer at the Wilfried Martens Centre for European Studies. He focuses on foreign, security and defence policy. He is also the Assistant Editor-in-Chief of the *European View*, the Martens Centre's biannual policy journal. He is author of the book *European Union Military Operations: A Collective Action Perspective* (Routledge 2018). Dr Novák has also published peer-reviewed articles on various aspects of EU defence cooperation in some of the most respected academic journals in the field.

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Wilfried Martens Centre for European Studies
Rue du Commerce 20
Brussels, BE 1000

For more information please visit: www.martenscentre.eu

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