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# Should the EU make foreign policy decisions by majority voting?

By Leonard Schuette



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- ★ Russian aggression, Chinese assertiveness and the fraying transatlantic alliance threaten the EU's interests in the world. Public opinion across the continent is in favour of a stronger common foreign policy. Divisions within the EU, however, 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.
- ★ In response, the European Commission proposes to extend Qualified Majority Voting (QMV) to three policy fields within the EU's Common Foreign and Security Policy (CFSP): sanctions, human rights positions and civilian missions. For a vote to pass under QMV, it requires 55 per cent of member-states representing at least 65 per cent of the total EU population to be in favour of a proposal in the Council. The Commission argues that these reforms would not require changes to the EU treaties.
- ★ In theory, QMV would increase the EU's effectiveness by ensuring that a single state or a small group could not block decisions. Member-states should see the benefits of such reforms: faced with external challenges to the rules-based order, their national interests should increasingly converge; and the treaties already protect critical national interests from majority decision taking.
- ★ In practice, majority voting would only help in one of the three areas: it would become easier to take decisions on sanctions. Human rights statements would not tangibly benefit from QMV, while civilian missions are inherently unsuitable to majority voting. Member-states should also use the existing provisions for QMV to implement common strategies.
- ★ Many member-states, however, 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 want to preserve their ability to do foreign policy favours for their investors by blocking EU action.
- ★ 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.
- ★ Extending QMV to sanctions can only be one tile in the bigger mosaic of making the EU a more effective foreign policy actor, albeit an important one.

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Donald Trump's repeated questioning of NATO and threats of a trade war may have inadvertently accomplished what not even Russia's annexation of Crimea achieved: forcing Europeans to reconsider their role in an increasingly unstable world. As a result, talk of revitalising the EU's CFSP and turning the EU into an autonomous strategic actor is in vogue again, and not only in Brussels.

One of the leading ideas for making the EU a stronger foreign policy actor is to change the way it reaches foreign policy decisions. In their June 2018 Meseberg Declaration, France and Germany agreed to "explore possibilities of using majority voting in the field of the Common Foreign and Security Policy".<sup>1</sup> European Commission President Jean-Claude Juncker went a step further and called for a definitive move to majority voting. In his state of the union address in September 2018, he argued that in order for the EU to become a shaper of global affairs, it needed to simplify its decision-making processes, arguing: "It is this compulsive need for unanimity that is keeping us from being able to act credibly on the global stage".<sup>2</sup>

*“Because an individual member-state can thwart collective action, the EU's foreign policy is often ineffective.”*

This policy brief examines whether the EU should introduce QMV to some areas of its foreign policy. At the moment, member-states take decisions within the remit of CFSP by unanimity. Because an individual member-state can thwart collective action, the EU's foreign policy is often ineffective in the face of crises over which member-states disagree. February 4<sup>th</sup> 2019 was a particularly bad day: Italy blocked a joint statement on the crisis in Venezuela; some non-NATO members blocked a statement on the looming collapse of the INF-Treaty; while Poland and Hungary blocked proposed conclusions for an EU-Arab League summit due to disagreements over migration. These are only the latest examples of a long list of cases when differences in interests, disagreements of

analysis, or third-party influence prevented the EU from acting as one.

Yet the EU should tread carefully. Unanimity is clearly an impediment to a more effective EU foreign policy, but abolishing it implies a significant change to the perceived sovereign status of member-states and the union as a whole.

This policy brief begins by tracing the evolution of EU foreign policy. The second part outlines the different EU foreign policy decision-making processes. Third, the brief explores the reasons why the EU needs to become a stronger foreign policy actor, focussing on external challenges and internal divisions. Fourth, it analyses whether extending QMV to CFSP would increase the EU foreign policy's effectiveness before, fifth, assessing the legitimacy of such a reform. The sixth part maps the positions of member-states on extending QMV. The brief concludes with a set of recommendations assessing whether QMV should be introduced, to what policy-fields, and how to address the reluctance of some member-states.

In short, QMV would help overcome divisions between member-states and thus make the EU's foreign policy more effective when: 1) differences between national interests are small and 2) only an individual member-state or a small group of them are seeking to block decisions, perhaps encouraged by third countries. The EU should apply QMV to sanctions, which promises to provide the greatest added value. But given the limited remit of CFSP and the persistent perception in European capitals of important differences in national interests, extending QMV would not by itself be transformative. It would only be an incremental improvement.

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## Historical evolution of EU foreign policy

Since its inception, the EU's foreign policy has had a different status from other policies. Whereas member-states gradually moved towards deeper integration of trade, monetary and some internal policies, foreign policy has long remained loosely integrated and under the close control of the member-states. Member-states created European Political Co-operation (EPC),

the nucleus of the EU's foreign policy, in 1970 as an informal forum for discussion and information sharing. All decisions required consensus among the member-states, who did not transfer any competences to the European level. Apart from a small secretariat, the member-states never endowed EPC with significant instruments and resources.

1: The governments of France and Germany, 'Meseberg Declaration', June 19<sup>th</sup> 2018.

2: Jean-Claude Juncker, 'State of the Union Address', September 12<sup>th</sup> 2018.

The Maastricht Treaty (1993) created the CFSP as the second pillar of the EU's new three-pillar structure. The first pillar included most internal market issues and agriculture, and the third pillar consisted of justice and home affairs. Unlike in the first pillar, member-states continued to dominate initiation and implementation stages of CFSP, while decision-making still required unanimity. But the treaty also created two legally-binding instruments, the Common Position and Joint Action. The latter could theoretically lead to implementing decisions taken by QMV, but in practice member-states have always decided unanimously.

*“Even though the Lisbon Treaty abolished the pillar structure, member-states insisted on keeping CFSP separate from other policies.”*

Like its predecessor, the CFSP initially lacked resources and member-states chose not to use the limited instruments they themselves had devised. Many member-states jealously guarded their foreign policy autonomy and some, including Britain and Denmark, were concerned that a more collective, autonomous EU foreign policy could threaten the transatlantic relationship with the US which they saw as essential to Europe's security. CFSP was therefore strong on symbolism, but weak on substance. Christopher Hill, a scholar of foreign policy, conceptualised this discrepancy between grandiose rhetoric and poor substance in 1993, coining the phrase ‘capability-expectations gap’. He identified a lack of adequate resources and instruments as well as an inability to agree, as the sources of the EU's feebleness as a foreign policy actor.<sup>3</sup>

Following the Maastricht Treaty, however, the EU took important steps towards increasing the resources dedicated to foreign policy and enlarging the toolbox of foreign policy instruments. Europe's disarray, impotence and reliance on the US during the Yugoslav Wars precipitated a rethink in European capitals in favour of a stronger CFSP. In the Treaty of Amsterdam (1999), member-states created the first permanent focal point for the EU's foreign policy effort: the position of the High

Representative (HR) for the CFSP. The role of the HR was designed to help the member-states in formulating, preparing, and implementing foreign policy decisions. Member-states also endowed the CFSP with a defence component by creating the Common Security and Defence Policy (CSDP, originally called European Security and Defence Policy).<sup>4</sup>

Wars in Iraq and Afghanistan in the 2000s, however, once again exposed the inadequacy of the EU's foreign policy capacities. In response, the Lisbon Treaty (2009) transformed the HR into the High Representative for Foreign Affairs and Security, who would simultaneously become a Vice-President of the Commission (HR/VP). The HR/VP chairs meetings of EU foreign ministers, replacing the previous system of six-monthly rotating member-state presidencies, thus improving the consistency of EU foreign policy-making; and as Commission Vice President, he or she is in a position to increase the coherence between internal policies, external economic policy (including trade and development assistance) and foreign policy. The treaty also created the EU's own diplomatic service – the European External Action Service (EEAS) – to give the HR/VP independent access to information and analysis (largely provided in the past by member-states selectively sharing national reporting), and lobbying capability going beyond the traditional areas such as trade covered by Commission delegations in non-EU countries. The external action budget has increased from €56 billion between 2006 and 2013<sup>5</sup> to €94.5 billion between 2014 and 2020, and the Commission has proposed to increase the funding further in the next budget to €123 billion between 2021 and 2027 (including greater defence spending through the European Defence Fund and Permanent Structured Co-operation).<sup>6</sup>

EU foreign policy integration since 1970 is thus a story of gradual expansion of common instruments and resources. While there is clearly a need for greater investment and more effective instruments, important changes have occurred over the past decade. This, however, is not the case when it comes to the decision-making processes. Even though the Lisbon Treaty abolished the pillar structure, member-states insisted on keeping CFSP separate from other policies.

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## EU foreign policy decision-making processes

In most cases that fall within the framework of external action and the external dimension of internal policies (such as trade), decision-making follows the ordinary

legislative procedure – the so-called ‘community method’. Here, the European Commission proposes legislation that is subsequently approved by the Council (which, for the

3: Christopher Hill, ‘The capabilities-expectations gap, or conceptualising Europe's international role’, *Journal of Common Market Studies*, 31 (1), 1993.

4: Rosa Balfour, Anna Barcikowska, Lawrence Freedman, Eva Gross, Anand Menon, Clara Marina O'Donnell, and William Wallace, ‘CSDP between internal constraints and external challenges’, *ISSUE, Report* 17, October 2013.

5: European Commission, ‘EU budget 2007 financial report’, Report, 2008.

6: European Commission, ‘EU budget: Making the EU fit for its role as strong global actor’, Press Release, June 14<sup>th</sup> 2018.

most part, acts by QMV) and by the European Parliament. The European Commission and the Court of Justice jointly ensure that member-states comply with decisions.

CFSP decision-making, instead, follows the intergovernmental method: member-states retain control over decision-making and act by unanimity, with very few exceptions. Member-states (with the help of the HR/VP) are charged with implementing decisions and the Court of Justice has limited jurisdiction in CFSP and CSDP. There are two cases where strict unanimity does not apply. First, a member-state may abstain from a decision otherwise made by unanimity without having to implement the adopted decision. But this provision has only been invoked once (by Cyprus in 2008, when the Council set up a civilian mission to Kosovo – which Cyprus does not recognise).<sup>7</sup> Second, there are ‘enabling clauses’, which already allow the Council to act by QMV under certain conditions:

i) when adopting a decision relating to the Union’s strategic interests and objectives. Those interests and

objectives would already have been agreed by the European Council by unanimity. This provision resembles what was known as ‘common strategies’ until the Lisbon Treaty: these set out the objectives, duration, and means to be made available for strategic engagement with a third country or region;

ii) on a proposal from the High Representative following a specific request from the European Council;

iii) when adopting any decision implementing a decision defining a Union action (the EU can only act in those areas where its member-states have authorised it to do so, expressed in the EU treaties);

iv) when appointing a special representative.<sup>8</sup>

These exceptions have only been applied once: in 2015, the EU’s special representative to the Sahel was appointed by QMV.<sup>9</sup>

**Table 1: Decision-making in EU foreign policy**

	Examples	Policy-making method	Main voting method in Council
CFSP	Diplomatic statements Sanctions	Intergovernmental	Unanimity (with the exception of the enabling clauses)
CSDP	Military missions Civilian missions	Intergovernmental	Unanimity
External action	Trade policy Humanitarian aid European neighbourhood policy	Community	QMV
External dimensions of internal policies	Energy policy Environmental policy Migration and refugee policy	Community	QMV

The European Commission has proposed the introduction of QMV to CFSP to increase the speed of decision-making and prevent the interests of individual member-states from derailing collective action. Specifically, the Commission called upon EU countries to adopt QMV in three policy fields within CFSP, where member-states have recently prevented the EU from acting as one:

1) positions on human rights questions in international fora;

2) decisions to establish sanctions regimes;

3) and decisions to launch or implement civilian missions in response to crises abroad.<sup>10</sup>

In legal terms, the extension of QMV beyond the enabling clauses is relatively straight forward and it does not necessitate the cumbersome process of changing the treaties. The so-called ‘*passerelle* clause’, enshrined in Article 31(4) TEU, offers the possibility to extend QMV

7: For greater detail on decision-making in EU foreign policy, see Stephan Keukeleire and Tom Delreux, ‘The foreign policy of the European Union’, Palgrave Macmillan, 2014.

8: Article 31(2) of the Treaty on European Union.

9: For more on legal differentiation in EU foreign policy, see Steven Blockmans, ‘Differentiation in CFSP’, *Studia Diplomatica*, 66 (3), Egmont Institute, 2013.

10: European Commission, ‘A stronger global actor: More efficient decision-making for EU Common Foreign and Security Policy’, Communication, September 12<sup>th</sup> 2018.

to new policy fields within CFSP unless the decisions have military or defence implications. Article 31(3) TEU accordingly states that the “European Council may unanimously adopt a decision stipulating that the Council

shall act by a qualified majority”. Some governments, including the German and Danish, would have to obtain their parliament’s consent to use the *passerelle* clause.

## A divided EU in an increasingly hostile world

The timing of the Commission’s proposal is not coincidental. The post-Cold War honeymoon is over. Rather than the world becoming more peaceful and interconnected, power politics has returned. Five years after the annexation of Crimea, Russia continues to threaten the security of European states by keeping the conflict in Eastern Ukraine simmering and using non-military techniques to divide EU member-states. China is no longer making pretence about its foreign policy ambitions to reshape the international order, and is becoming increasingly assertive on the world stage. Meanwhile, international organisations, designed to foster co-operation between states, are increasingly under pressure.<sup>11</sup> And in that turbulent environment, the EU can no longer rely on the US to react to crises across the world and protect the EU’s interests.<sup>12</sup> President Trump thinks that American stewardship of the international order has been a bad deal for America, and that the Europeans have exploited the US security umbrella. He also does not believe that co-operation is a positive-sum game, and instead wants to return to a world where raw power is the main currency.<sup>13</sup>

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External events have played a significant role in driving foreign policy integration in the past. Today’s increasingly polarised world and the return of power politics should give fresh impetus to thinking about how to make the EU a more coherent and effective foreign policy actor. To protect its interests in the world the EU needs to become more than merely the sum of its parts.

But the Commission’s proposal is not just a reaction to changes in the external environment. EU foreign policy suffers chronically from internal divisions between member-states, which have recently worsened. The list of failures to achieve unanimity, or a fragile unanimity

based on a lowest common denominator, is long. But the sources of divisions vary between:

### ★ Cases of conflicting assessments of a problem

Different outlooks on foreign policy issues, often grounded in different foreign policy cultures, sometimes cause divisions among member-states. Such disagreements are also a reflection of the relative lack of strategic thinking on foreign policy at the European level. Cases when conflicting assessments of foreign policy issues prevent collective action include the civil wars in Syria and Yemen, and the Israeli-Palestinian peace process. Across the Middle East, the EU is absent and divided over what the regional order should look like and how to get there.<sup>14</sup>

### ★ Cases of genuinely conflicting national interests

The divergence of national interests among member-states provides the most fundamental challenge to a common and effective EU foreign policy. For instance, many Central and Eastern European member-states like Poland or the Baltics (but also Sweden) feel Russia breathing down their necks, while those states not in geographical proximity, like Italy or Germany, which often also have close economic ties, have a much lower threat perception. Nord Stream 2 is a case in point. Germany and others see the proposed pipeline in the Baltic Sea as an economic opportunity. The Baltics and Poland, in contrast, fear the security implications of increasing the EU’s energy reliance on Russia and circumventing the transit route through Ukraine.

### ★ Cases when third countries encourage member-states to block consensus

China and Russia have increasingly used their economic leverage to divide and rule the EU by bribing or pressuring member-states.<sup>15</sup> Hungary and Greece, both major recipients of Chinese foreign direct investment, watered down an EU statement on the dispute between China and the Philippines on territorial claims in the South China Sea in 2016, while Hungary blocked an EU statement in the United Nations Human Rights Council on China’s human rights record in 2017.<sup>16</sup>

11: Hylke Dijkstra, ‘Who gets to live forever? An institutional theory on the life and death of international organizations’, paper prepared for the ECPR Joint Sessions, Mons, April 2019.

12: See Thomas Wright, ‘A post-American Europe and the future of US strategy’, Brookings Institution, report, December 2017.

13: Ian Bond, ‘Trump’s foreign policy: Two years of living dangerously’, CER Bulletin, Issue 124, February/March 2019.

14: Marc Otte, ‘The quest for a regional order in the Middle East’, Egmont Security Policy Brief, 94, February 2018 and Beth Oppenheim ‘You never listen to me: The European-Saudi relationship after Khashoggi’, CER policy brief, May 2019.

15: Mitchell Orenstein and Daniel Kelemen, ‘Trojan horses in EU foreign policy’, Journal of Common Market Studies, 55 (1), 2017.

16: On the growing assertiveness of Chinese foreign policy towards the EU, see Thorsten Brenner, Jan Gaspers, Mareike Ohlberg, Lucrezia Poggetti, and Kristin Shi-Kupfer, ‘Authoritarian Advance. Responding to China’s growing influence in Europe’, GPPi and MERICS Report, February 2018.

Not all cases, can be neatly categorised – the different sources of divisions may reinforce each other. The EU sanctions regime imposed on Russia following the annexation of Crimea in 2014 epitomises how conflicting national interests and third party influence can play out. On the surface, the sanctions represent almost a singular example of unity on a critical foreign policy development. Germany, which itself has close economic relations with Russia, with the support of France and the UK managed to gain the acquiescence of even those countries that had close economic and political ties with Russia – notably Greece, Cyprus, and Hungary.

*“Beneath the surface of many divisions lies a profound conflict over the very nature of EU foreign policy.”*

This success should not, however, obscure two points. First, Russia has exploited its leverage to undermine the sanctions regime in the background: Cyprus signed a deal to allow Russian naval ships to use its ports; Greece signed a gas pipeline deal with Russia; and Hungary made Russia its sole supplier of nuclear fuel. Second, the EU imposed sanctions at a time when opponents were weak: the governments of Greece and Cyprus were reliant on EU bailout financing, while the precarious state of Italy’s economy limited its willingness to alienate Germany. The Obama administration also pressed for a strong EU response. Now the financial pressures on Greece and Cyprus have abated and Italy’s new populist government has repeatedly signalled its reluctance to roll over the

sanctions. Maintaining the sanctions regime in the future will be ever more difficult.

Beneath the surface of many divisions lies a profound conflict over the very nature of EU foreign policy. Not all political parties want the EU to act collectively beyond its borders. From the National Rally (formerly the National Front) in France, the Alternative for Germany, to the Austrian Freedom Party, radical right-wing parties (perhaps the only significant left-wing eurosceptic party opposed to internationalism is *La France Insoumise*) have poisoned the public debate. The stance of these parties has made it more difficult for mainstream governments to pursue an outward-looking foreign policy. In Hungary and Italy, nativist parties already form the government and actively pursue a nationalist foreign policy agenda.

In the past, most member-states faced with the likelihood of being isolated in opposition to a collective decision would have conceded, perhaps in return for a small gesture to acknowledge their concerns about the decision. The rise of euroscepticism, however, has gone hand in hand with greater obstinacy and willingness to block decisions.

The critical question then is whether an extension of QMV can help address the paradox that at a time when it most needs unity in the face of significant geopolitical challenges, the EU is more divided than it has ever been. If a reform of the EU’s decision-making processes is to be worthwhile, QMV must both increase the effectiveness of EU foreign policy and be legitimate in the eyes of the member-states.

## Bridging divides?

The threat of a veto allows recalcitrant member-states to water down agreements, delay decision-making, or thwart a common policy altogether. The greater the number of states, the more the need for unanimity risks paralysing decision-making. In response to enlargement, the EU has therefore continuously extended the application of majority voting to other policy fields, so that it now applies to over 90 per cent of EU legislation.<sup>17</sup> Actions in the framework of CFSP, however, together with treaty amendment, enlargement, taxation and the EU’s multi-annual financial framework, continue to be decided by unanimity. Even the smallest states retain their formal sovereignty in not having to submit to a decision they oppose. But the ability of member-states to exercise effective foreign policy sovereignty collectively – that is, to set objectives and apply their resources to achieve them – is restricted by their need to compromise with the

least enthusiastic member-state in any given situation in order to reach consensus.<sup>18</sup>

The EU’s foreign policy weaknesses are not just the result of individual governments being obstructive but are also baked into the institutional architecture of the EU. The EU is more than a confederation of states, but has fewer powers than federal states. Unlike the US or Germany, the EU does not possess a single foreign policy. If member-states do not reach consensus, they can unilaterally pursue their own, at times contradictory, foreign policies. And even if a thin consensus is reached, member-states often defy common positions (Italy and France pursuing different policies on Libya despite a common EU position is a recent example). The EU’s halfway integration in foreign policy makes it inherently prone to disunity and, indeed, even incentivises the use of divide-and-rule tactics by external powers.<sup>19</sup>

17: Neill Nugent, ‘Enlargements and their impact on EU governance and decision-making’, *Journal of Contemporary European Research*, 12 (1), 2016.

18: Robin Niblett, ‘Britain, the EU and the sovereignty myth’, Chatham House, Research Paper, May 2016.

19: Daniel Kelemen, ‘Building the new European state? Federalism, core state powers and European integration’, in Philipp Genschel and Markus Jachtenfuchs, ‘Beyond the regulatory polity?’, Oxford University Press, 2014.

If QMV were to be introduced, it is likely that CFSP would follow the trajectory of other policy realms where voting is rare, even if the treaties allow for it. However, the crucial difference is that decisions would then be reached in the shadow of the vote rather than of the veto. This would encourage member-states likely to be in the minority to intensify negotiation efforts, build alliances, and contribute to achieving an agreement rather than being rewarded for obstructionism. EU foreign policy decision-making would be quicker and more ambitious as a result. It would also shield individual member-states from the pressures of third parties. Instead of having to gain the support of just one EU member-state to thwart a foreign policy decision, third parties would then have to win over at least four states (assuming they represent 35 per cent of the EU population) to form a blocking minority. The possibility of a vote could thus serve as a driver of unity rather than division.<sup>20</sup>

*“The EU’s halfway integration in foreign policy makes it inherently prone to disunity.”*

QMV would therefore prevent member-states from blocking foreign policy decisions when third countries encourage member-states to break consensus, and would also shield EU foreign policy from the corrosive intentions of eurosceptic governments. But it would not miraculously lead to a convergence in national interests or assessments of geopolitical challenges, the other two sources of divisions. What QMV would do, however, is to incentivise unity where the differences are small. And, in fact, national interests among the European states ought to be converging. The challenges to multilateralism exert great pressures on all member-states to collaborate in defence of European interests. As the world outside Europe is diverging from the European model of a rules-based international order composed of liberal democracies, the interests among European states should converge. QMV would help overcome the narcissism of small differences in national interests that has all too often prevented joint EU action.

QMV cannot be a panacea for all of the EU’s foreign policy ills, because the remit of CFSP is limited. But it would allow the EU to better protect its interests. In an increasingly adversarial climate, having the tools to react to, for instance, the encroachment of Russia and China will be crucial. QMV would make the EU a more effective foreign policy actor. It would put the ‘common’ back in CFSP by combatting divide-and-rule tactics and encouraging unity.

But President Juncker may not have identified the most suitable areas. The nature of CSDP missions is not conducive to majority voting. Even civilian missions

20: Stéphanie Novak, ‘Qualified majority voting from the Single European Act to present day: An unexpected permanence’, Notre Europe Study, 88, November 2011.

require member-states to put their citizens in harm’s way. It is inconceivable that member-states, having voted not to deploy a mission, would then provide personnel and risk the life of their citizens. And while member-states can already refuse to send troops to CSDP missions, the EU should not set a precedent of majority voting in security policy, unless the very nature of the union were fundamentally changed. Extending QMV to civilian CSDP missions would therefore not only be categorically opposed by member-states but also, even if adopted, yield no practical benefits to the EU’s foreign policy.

Human rights statements are an ambiguous case. They are by definition declaratory – they indicate where the EU stands on respective issues – rather than operational. As such, the impact of human rights statements on the recipient is symbolic and rests on the credibility of the sender. Only a united EU would send a strong message towards authoritarian states. But then a weak message might be preferable to not sending a message at all.

Allowing for QMV on human rights positions in international fora would also be difficult from a legal perspective. At present, the Council adopts non-binding conclusions or statements on human rights. For a position adopted by QMV to be credible, the Council would have to vote on a binding decision instead, for example before meetings of the UN Human Rights Council. But no tried and tested mechanism to transform a non-binding conclusion into a legal act exists. Due to the marginal impact, at best, of changing the voting procedure on human rights statements, and the legal hurdles, the political capital would thus be better spent on reforms in more consequential policy fields.

Instead, the EU should focus on sanctions. Sanctions are the most powerful foreign policy instrument in the EU’s repertoire, so introducing QMV would lead to a tangible increase of effectiveness. And its operational nature means that the effects of the sanction regime would be the same whether the decision had been taken by majority voting or unanimity (assuming that the decision is enforced effectively, see below).

Critics of the QMV proposal point out that the requirement for unanimity has not prevented the EU from imposing sanctions on Russia and others.<sup>21</sup> But such a view is mistaken. First, it is reasonable to assume that by overcoming the lowest common denominator logic, sanctions regimes would be stronger under QMV than unanimity requirements. Second, China’s (and to a lesser extent Russia’s) pursuit of divide-and-rule tactics is likely to intensify as it becomes ever more assertive on the global stage, increasing the need for QMV. If eurosceptic parties continue to gain power in member-states, the EU risks becoming ever more vulnerable to external pressures, increasing the added value of QMV.

21: Author’s interviews. As of April 2019, the EU has 43 sanctions regimes in place, according to ‘EU sanctions map’.

The effectiveness of sanctions policy under QMV, however, rests on the EU's ability to enforce decisions. At present, neither the Commission nor the Court of Justice has a meaningful mandate to monitor and sanction non-compliant behaviour in CFSP. The implementation of sanctions (like much of EU legislation), for instance, falls under the remit of national law enforcement agencies. And under QMV, outvoted member-states will have a greater incentive for non-compliance. But extending the mandates of the Commission and the Court of Justice would require a change of the treaties, which is difficult to imagine in the current adverse political climate. Since the social sanctions of naming and shaming appear to have become powerless, the EU might have to create a new institution or extend competences of an existing one to enforce sanctions, as is further explored below.

Another area where QMV could increase the EU's effectiveness is the implementation of decisions of the European Council on the strategic interests and objectives of the Union (known before the Lisbon Treaty as 'common strategies'). The EU adopted common strategies on Russia, Ukraine, and the Mediterranean region between 1999 and 2000, but has not made use of the instrument since.<sup>22</sup> But the EU is in need of a more strategic foreign policy approach. By themselves, common strategies would therefore be useful in that they would encourage the EU to define its long-term objectives and spell out how it would leverage its existing means to achieve them (say with regard to China or the Middle East). QMV would make the implementation easier as well as quicker, as the treaties already provide for using QMV via the enabling clauses.

## Legitimacy concerns

QMV does not only need to make the EU as a whole more effective, but individual member-states must also view it as legitimate.<sup>23</sup> Moving to majority voting increases the potential for the formal sovereignty of each member-state to be restricted. When the EU first tried to introduce majority voting on matters such as grain prices and movement of capital, it triggered a constitutional crisis – the so-called empty chair crisis in 1965-66 – because President de Gaulle objected to what he perceived an illegitimate curtailment of French sovereignty. The application of QMV is still highly contested today even in fields where member-states have agreed to decide collectively. In September 2015, the Council decided against the will of Slovakia, Hungary, Romania, and the Czech Republic to establish a mandatory relocation mechanism for the distribution of 120,000 asylum seekers from Italy and Greece.<sup>24</sup> Slovakia, Hungary, and Poland challenged the decision before the Court of Justice. Although the court dismissed their case, the three countries have refused to comply with the Council decision.

*“Public opinion across the EU is in favour of a stronger common foreign and security policy.”*

For a decision to be legitimate, at least two conditions should be satisfied: national interests should be broadly convergent to ensure that the outvoted minority can

accept the majority decision taken; and the most important interests should be protected to avoid the majority steam-rolling over core interests of the minority.

Critics of deeper foreign policy integration have long argued that foreign policy preferences among member-states are more entrenched and more diverse than, for example, economic interests – which is why foreign policy should be treated separately from other realms where QMV already applies.<sup>25</sup> Differences were said to be rooted in varying worldviews and strategic cultures, which are less amenable to a mutually beneficial compromise. Cleavages in power and capabilities between larger member-states (some of which are nuclear powers with seats on the UN Security Council) and smaller ones reinforce this point. As the list of past divisions above demonstrates, member-states have often lacked a collective sense of the fundamental direction of an EU foreign policy.

While these are legitimate observations, they are outdated. This brief has already made the argument that the challenges to multilateralism should have a coalescing effect on the national interests of the EU member-states. Europeans have common interests in locking China into the rules-based order, deterring Russian territorial aggression, maintaining the international trade regime, strengthening global governance institutions such as the Paris Climate Treaty, and defending the authority of the UN and international law, to name but a few. In light of the scale of these

22: The EU's Global Strategy of 2016 was not legally designed as a common strategy.

23: See for example Fritz Scharpf, 'De-constitutionalization and majority rule', MPIFG, Discussion Paper, December 2016; Luuk van Middelaar, 'The passage to Europe', Yale University Press, 2013 and Juergen Habermas and Jacques Derrida, 'February 15, or What binds Europeans together: A plea for a common foreign policy, beginning in the core of Europe', Constellations, 10 (3), 2003.

24: Council of the EU, 'Council decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece', September 24<sup>th</sup> 2015.

25: See for example Alexander Reichwein, 'Realism and European foreign policy: Promises and shortcomings', in Knud Erik Jorgensen, Aasne Kalland Aarstad, Edith Drieskens, Katie Laatikainen, and Ben Tonra (eds) 'The SAGE handbook of European foreign policy', 2015; and Mathias Koenig-Archibugi, 'Explaining government preferences for institutional change in EU foreign and security policy', in International Organization, 58, 2004.

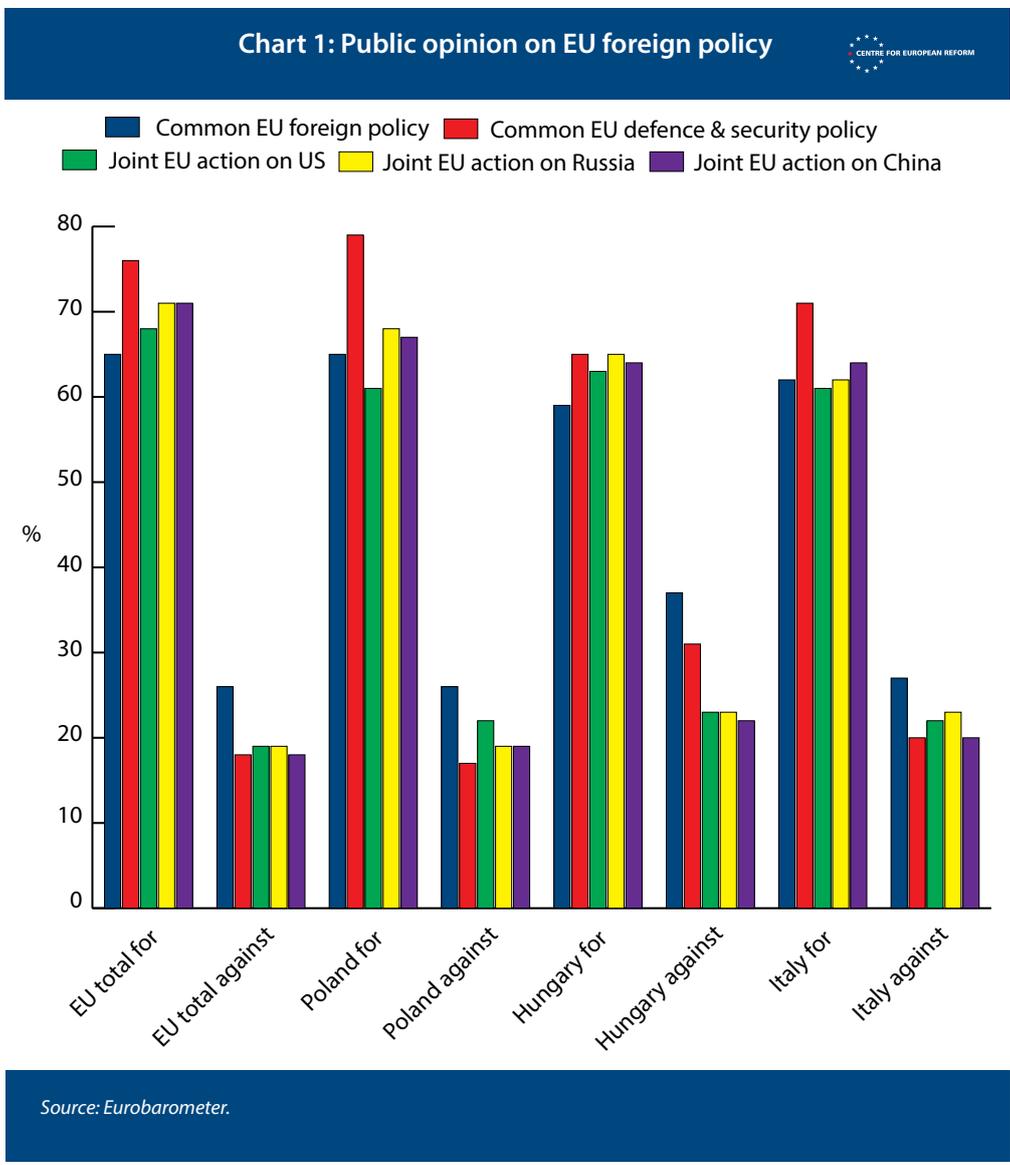
challenges, the existing differences in national interests appear marginal. The bigger problem is that many member-states underestimate the gravity of the incipient changes in the international environment.

The argument that foreign policy is too sensitive a field for states to countenance deeper integration is equally flawed. Of course, it would be unimaginable to decide to deploy combat troops by QMV. But in most cases, the policies the Council would vote on would not be more consequential than other policies already subject to QMV. It is not apparent why voting on a sanctions regime is inherently more delicate than, for instance, voting on the President of the European Commission (the incumbent Jean-Claude Juncker was elected against the express wishes of Britain and Hungary), trade negotiations or some decisions falling under justice and home affairs.

Second, the protection of the core national interests of the outvoted minority is particularly strong in CFSP,

stronger than in other policy realms where member-states already decide by majority voting. For any decision under QMV to pass, those in favour must comprise 55 per cent of member-states and member-states representing at least 65 per cent of the total EU population; but in addition, article 31(2) grants member-states the right to veto a majority vote in CFSP “for vital and stated reasons of national policy”. Consequently, in the unlikely case that the majority would not take the legitimate concerns of states likely to be in the minority into account, the matter would be “referred to the European Council for a decision by unanimity”.

Moreover, public opinion across the EU is also in favour of a stronger common foreign and security policy. According to the latest Eurobarometer polls, a strong majority of EU citizens, including those of countries with eurosceptic governments, supports a common EU foreign policy, a common defence and security policy, and joint EU action towards the US, China, and Russia.<sup>26</sup>



26: European Commission, ‘Standard Eurobarometer 90’, Autumn 2018 and European Parliament, ‘Delivering on Europe. Citizens’ views on current and future EU action’, Eurobarometer 89.2, May 2018.

In sum, the converging national interests, strong protection against core national interests being overruled, and widespread public support should make QMV in CFSP legitimate. This judgement, however, rests

on the fundamental premise that member-states agree that the EU should have a common foreign policy at all – an assumption not necessarily shared by eurosceptic governments.

## Opposition from member-states

The extension of QMV will encounter serious resistance from member-states, whose unanimous consent to give up their veto is required.<sup>27</sup> The fiercest opposition is likely to come from a group of member-states currently governed by eurosceptic parties. Hungary, Poland, and Italy under the current League-Five Star government ideologically oppose granting the EU greater control over foreign policy decisions. Moreover, given their own illiberal inclinations, they break with the EU consensus that the political influence of authoritarian powers should be resisted.

*“The opposition to extending QMV may be more fragile than it initially appears.”*

Persuading those member-states with eurosceptic governments will be almost impossible in the short term. Yet proponents of extending QMV (and other forms of deepening EU integration) should not succumb to fatalism. The illiberal tendencies in Poland, Hungary, Romania, but also Italy are manifest but not irreversible. Victor Orbán and his political brethren will not be in power forever. Recent waves of protests against incumbent governments across central and Eastern Europe and the election of Zuzana Caputová, a liberal, pro-EU, anti-corruption campaigner as Slovakian president serve as reminders that these states are not pathologically illiberal. And even while they are in power, eurosceptic governments are subject to *realpolitik*, and situations may occur when their dependence on other member-states will be sufficient for them not to block extending QMV (just as none of them blocked EU sanctions against Russia following the annexation of Crimea).

Moreover, the current illiberal front is internally divided. On Russia, for example, Poland and Italy are diametrically opposed, with Poland advocating a tough policy while Italy has repeatedly toyed with ending the sanctions regime. Poland could thus benefit significantly if QMV were to be applied to new sanctions packages because countries favourable to Russia would not command a blocking minority.<sup>28</sup> These points suggest that the

opposition to extending QMV may be more fragile than it initially appears.

But other member-states also feel uneasy about the proposed reform. Smaller states express concern that QMV could be used by the larger states as an instrument to impose their will, because population size is translated into voting power under the double-majority requirements. Larger states like France and Germany, but also Italy, Spain, and Poland, are less likely to be outvoted. In fact, Brexit further increases the voting power in the Council of larger member-states (all member-states with a population of more than 4.5 million) in relation to smaller member-states.<sup>29</sup>

Compounding these concerns, some of these smaller member-states have particular characteristics that make them wary of giving up their foreign policy autonomy. The Baltic states, for instance, are staunch Atlanticists and fear an aggressive Russia that has developed strong ties to some member-states. They will not want to be dragged into EU positions opposed to the US, or to be unable to block a reset of the EU's relations with Russia. Others like Ireland or Austria are neutral powers – i.e. not members of NATO – who are likely to be more nervous of being outvoted on decisions to take action that they might regard as incompatible with their neutrality. Some smaller states have signalled their support for the Commission's proposal, however. Both Belgium and The Netherlands (at least in the realm of sanctions) favour the extension of QMV.

Many of the smaller member-states' concerns can be accommodated within QMV in CFSP. Without treaty change, the EU cannot vote on military matters by majority and member-states with serious concerns can always rely on article 31(2) to give them a veto if core national interests are concerned. And they too would benefit from a more effective EU foreign policy. The strong protection of core national interests via article 31(2), however, also opens the door for abuse. It is conceivable, if not necessarily likely, that recalcitrant member-states could use the clause in bad faith by blocking any decisions that go against them. This safeguarding provision is thus inherently a double-edged sword.

27: This assessment is partially based on interviews with officials from several member-states conducted by the author in February 2019.

28: Assuming that Italy, Hungary, Romania, Greece, Cyprus, Austria, and Bulgaria voted against a tougher sanction regime, the vote would still pass (assuming Britain leaves the EU). See European Council, 'Voting calculator'.

29: Werner Kirsch, 'Brexit and the distribution of power in the Council of the EU', CEPS Commentary, November 25<sup>th</sup> 2016.

Last, those countries that have been influenced by Chinese or Russian investments and have tried, successfully or not, to steer EU policy into more pro-Beijing or pro-Moscow directions may be unwilling to give up their veto in CFSP for fear of losing the financial, or other, benefits of their relations with those two powers. While some of those parties are also

ideologically opposed to an EU foreign policy (like Hungary), others are not. Greece and Portugal continue to be governed by pro-European parties. Their motives for accepting Russian and Chinese investment and political influence stem primarily from the precarious state of public finances following the repercussions of the euro crisis, not from euroscepticism.

## Recommendations

The EU needs to be able to withstand the pressures of authoritarian states and defend its interests in a deteriorating international environment. Extending QMV to CFSP can only ever be one tile in the bigger mosaic of making the EU a more effective foreign policy actor. But it would be an important one nonetheless.

*“France and Germany must make greater efforts to consult and incorporate the views of smaller member-states.”*

The EU should tap into the potential that the existing enabling clauses offer. Member-states should use QMV in deciding how to implement common strategies. This would give some teeth to the EU’s policy towards the great powers, above all China, and could help counteract their divide-and-rule tactics.

Beyond making use of the enabling clauses, QMV should be applied to sanctions, but not to human rights positions or civilian CSDP missions. Only sanctions promise to gain in effectiveness from QMV, and the legal case is also relatively straightforward. Since sanctions already require Council decisions that are legally binding, majority voting can be readily introduced. But for sanctions policy under QMV to work, the EU must address the existing weak enforcement mechanisms, which would be compounded if states were outvoted and thus had greater incentives not to comply with collective decisions. Member-state law enforcement agencies, not EU bodies, currently monitor and enforce sanctions, and information is only inadequately shared across the union. Member-states should therefore explore several options to strengthen monitoring and enforcement of sanctions.<sup>30</sup>

One could be to create an EU agency akin to the US Office of Foreign Assets Control – the agency endowed with the powers to enforce sanctions agreed by the US government – to ensure the effectiveness of sanctions.<sup>31</sup> But there is no explicit legal basis in the treaties for such an agency. It may therefore be preferable to extend the competences of existing institutions, such as the

European Banking Authority. To ensure due process, the EU should also consider creating the position of an Ombudsperson to review the listing of targeted sanctions.<sup>32</sup>

The EU should also consider reforms to ensure the democratic accountability of CFSP, although foreign and security policy is traditionally the prerogative of the executive and thus requires less democratic control than other fields. Under unanimity requirements, the veto of each individual government legitimises CFSP decisions. If they could now be outvoted, the democratic legitimacy of CFSP would be undermined, unless it were compensated for by elevating the role of the European Parliament (which is the norm for other realms where QMV applies). But this poses a problem in itself: one of the motivations of the proposed reform is to increase the speed of decision-making, which would be made more difficult if the European Parliament had co-decision powers. Instead, the European Parliament could be granted greater *post factum* competences (as possessed by national parliamentary committees, such as the House of Common Foreign Affairs Select Committee) to inquire into the implementation of a sanctions regime and make recommendations on future policy. Such a step would avoid paralysing decision-making, while increasing its democratic accountability.

Allaying member-states’ reservations about or opposition to increasing the use of QMV will be difficult in the short term, but not impossible in the medium term. For a start, external events can shift red lines. The euro crisis, for instance, was a catalyst for member-states to move beyond established rules and institutions so as to respond to an economic emergency. Russia’s annexation of Crimea and the election of Donald Trump fuelled an unprecedented push to strengthen the EU’s defence capabilities. In the current geopolitical climate, the possibility of yet another crisis that causes member-states to rethink their positions on QMV is probable.

But waiting for a crisis to spur integration is not particularly advisable. There are other steps that should be taken. The big member-states must try to assuage the concerns of smaller members that QMV is merely an

30: I am indebted to Steven Blockmans and Maya Lester for their guidance on legal questions.

31: Iana Dreyer and José Luengo-Cabrera, ‘Introduction: On target? EU sanctions as security policy tool’, EUISS Report, 25, September 2015.

32: Such an EU ombudsperson could be mirrored on the United Nations Security Ombudsperson for sanctions against ISIL and Al-Qaida.

instrument to impose their will. In all policy realms, not just CFSP, France and Germany must make greater efforts to consult and incorporate the views of smaller member-states, who fear that with the departure of the UK they have lost an important ally in balancing against Paris and Berlin. Germany, in particular, has not been practising what it preaches. Whether it is Germany's unilateral decision to suspend arms exports to Saudi Arabia (at the expense of other European states, whose suppliers rely on German components), its obstinate defence of Nord Stream 2, or its bilateral government consultations with China, Germany's foreign policy does not match its constant calls for EU unity. To prepare the ground for the extension of QMV, Wolfgang Ischinger, chairman of the Munich Security Conference, has made the compelling proposal that the German government should in the meantime announce that it would unilaterally relinquish its veto in the Council if it found itself isolated in opposition to the other member-states. Only when Germany and France genuinely demonstrate that they seek common EU positions will they be able to convince smaller member-states of the virtue of extending QMV.

The EU also needs to offer alternative sources of financing to cash-strapped member-states. The emphasis on fiscal consolidation within the eurozone over the recent decade has led to chronic underinvestment in

infrastructure. Italy's recent endorsement of the Chinese Belt and Road Initiative (the first G7 country to do so) shows that Europe lacks a strong investment agenda. The bailout programmes for Greece and Portugal also included demands to privatise public assets to bring down headline debt figures, even though such a course of action does not reduce public net debt, which should be the real concern. Where Europe retreats out of an unjustified fear of public debt, China steps in: China, for instance, bought a 51 per cent stake in the Greek port of Piraeus and is currently in negotiations to further increase its 23 per cent stake in the Portuguese electricity operator Energias de Portugal.

If the EU wants to create greater cohesion, it should revise the fiscal rules to encourage, not inhibit, investment. The current framework incentivises even pro-European governments to break ranks to attract essential investment. At the same time, the EU is also right to create investment screening mechanisms to prevent foreign companies from acquiring critical infrastructure and technology and thus building their leverage vis-à-vis the respective host states. But the recently agreed investment screening regulation is about information sharing; it stops short of delegating the power to the Commission to stop foreign direct investment, which will limit its effectiveness.<sup>33</sup>

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## Conclusion

To protect its interests in the world, the EU must become a stronger foreign policy actor. In the face of external pressures emanating from Russia, China, but also the US, as well as internal divisions, extending QMV (and using existing possibilities) promises to be one step in the right direction. QMV incentivises unity when differences in national interests are small and would act as a firewall shielding the EU from the divide-and-rule tactics of third parties. Sanctions, in particular, could become an even more important foreign policy tool if they were no longer to be decided by unanimity. Common strategies should also be revamped and implemented by QMV. Overcoming the opposition of several member-states will not be easy and requires honest reflection in Berlin and Paris. But ultimately, extending QMV is not a chimera but a plausible reform, at least in the medium term.

In his considerations on the government in Poland, Jean-Jacques Rousseau describes how the individual veto of each deputy in the Polish-Lithuanian diet (Sejm) turned from a guarantor of freedom to a source of impotence. Surrounded by menacing neighbours and

vulnerable to their bribery, the Sejm was paralysed for large parts of the 17<sup>th</sup> and 18<sup>th</sup> century and the Polish-Lithuanian Commonwealth eventually collapsed in the face of external aggression in 1795. The EU's survival is not (yet) at stake, but this recourse to history provides a telling example of the dangers a disunited EU faces in a multipolar world increasingly dominated by power politics. European policy-makers should take note.

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33: The European Parliament and the Council, 'Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union', March 19<sup>th</sup> 2019.