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Making Faster and Better Decisions in EU Common Foreign and Security Policy

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RETHINKING A GLOBAL EUROPE

Ideas to make the EU
a stronger global actor



POLICY BRIEF 2

JULY 2023

MAKING FASTER AND BETTER DECISIONS IN EU COMMON FOREIGN AND SECURITY POLICY

Delayed, or even vetoed, decisions on the EU's Common Foreign and Security Policy (CFSP) have marred the efficiency of decision-making in CFSP for years – and by extent, they hinder the EU on its path to becoming a more assertive global actor. This brief shows realistic options the EU can use to implement more qualified majority voting (QMV) in the CFSP and closely related policy areas. In addition to activating underused CFSP Treaty provisions, the EU could boost its use of trade, and to some extent, internal competences – and thereby QMV – to pursue CFSP objectives.

1. Use EU trade competences to pursue CFSP objectives by QMV

Interpreting the EU's external action holistically opens doors to more efficient decision-making procedures. In particular, the EU should continue to use its trade competences to promote CFSP objectives, as it has recently done in the Anti-Coercion Instrument and the proposed forced labour legislation. These are trade instruments – and are thus based on the ordinary legislative procedure – but at the same time they pursue wider foreign and security policy objectives. The Commission should lead the process of taking a holistic view on EU external action.

2. Rely on internal policies to exert external influence

Internal policies can also help pursue CFSP objectives. In adopting sanctions, for example, the EU should creatively explore alternative legal bases. In unique situations, EU transport competences can for instance be used to adopt sanctions: amid the Belarus border crisis in 2021, the Commission proposed blacklisting transport companies involved in human trafficking through a legal base drawing on the EU's transport competences. This allowed for ordinary legislative procedure, and thus also the use of QMV in the Council.

3. Keep pushing towards QMV in CFSP frameworks

Meanwhile, EU institutions – in particular the Commission and Parliament – should continue to promote the idea of using QMV *within* the CFSP framework. The *passerelle* clause under Article 31(3) TEU would allow extending QMV to selected areas, for example, in relation to human rights statements or some restrictive measures (sanctions). Member States in the 'Group of Friends of QMV' should provide concrete and acceptable steps towards the activation of this clause.

4. Convince hesitant Member States through the QMV variations offered by the Treaties

To convince hesitant Member States, keep reminding them that even if QMV is expanded in CFSP, Member States will always have the possibility to use the 'emergency brake', which would allow them to oppose using QMV for "vital and stated reasons of national policy" (Article 31(2) TEU).

MAKING FASTER AND BETTER DECISIONS IN EU COMMON FOREIGN AND SECURITY POLICY

QMV in the CFSP features prominently on the EU's agenda. New geopolitical challenges, including Russia's war in Ukraine and a more assertive China, require more efficient decision-making for foreign and security policy. This policy brief proposes realistic options to activate QMV. By taking a more holistic perspective on the EU's external relations, linking CFSP to other policy areas, the EU can use its full range of competences – and corresponding decision-making procedures – to exert external influence.

Introduction

Several Member States have delayed, or even vetoed, CFSP decisions – examples include Hungary blocking the listing of Patriarch Kirill, the head of Russia's Orthodox Church, in EU sanctions, and Cyprus' initial veto over the sanctions package targeting Belarus President Alexander Lukashenko in 2020. But delayed or vetoed decisions on the EU's CFSP mar the efficiency of decision-making – and by extent, they hinder the EU on its path to becoming a more assertive global actor. This brief shows options the EU can use to implement more QMV in the CFSP and closely related policy areas. In addition to activating underused CFSP Treaty provisions, the EU could boost its use of trade, and to some extent, internal competences – and thereby QMV – to pursue CFSP objectives.

Why does this matter?

ENGAGE research has extensively studied the legal bases and governance mechanisms of the EU's [Common Security and Defence Policy \(CSDP\)](#), [Common Foreign and Security Policy \(CFSP\)](#), and its [wider external action](#). One main question was: What legal options exist to boost the effectiveness and coherence of the EU's external action?



When it comes to effectiveness, the CFSP's specific rules and procedures form a [key barrier](#) to more efficient, and hence effective, external action. In particular, the [unanimity](#) requirement can and does delay decision-making, or even lead to vetoes. In the face of new geopolitical challenges, this mode of decision-making has become [somewhat obsolete](#). In addition, if new EU enlargement round(s) increase the number of Member States to 30 or more, CFSP decision-making procedures may become even further paralysed. While it may be difficult, and perhaps not even preferred, to completely abolish the unanimity requirement, [a gradual shift from unanimity to QMV](#) has proven to be necessary for the EU to attain its objectives.

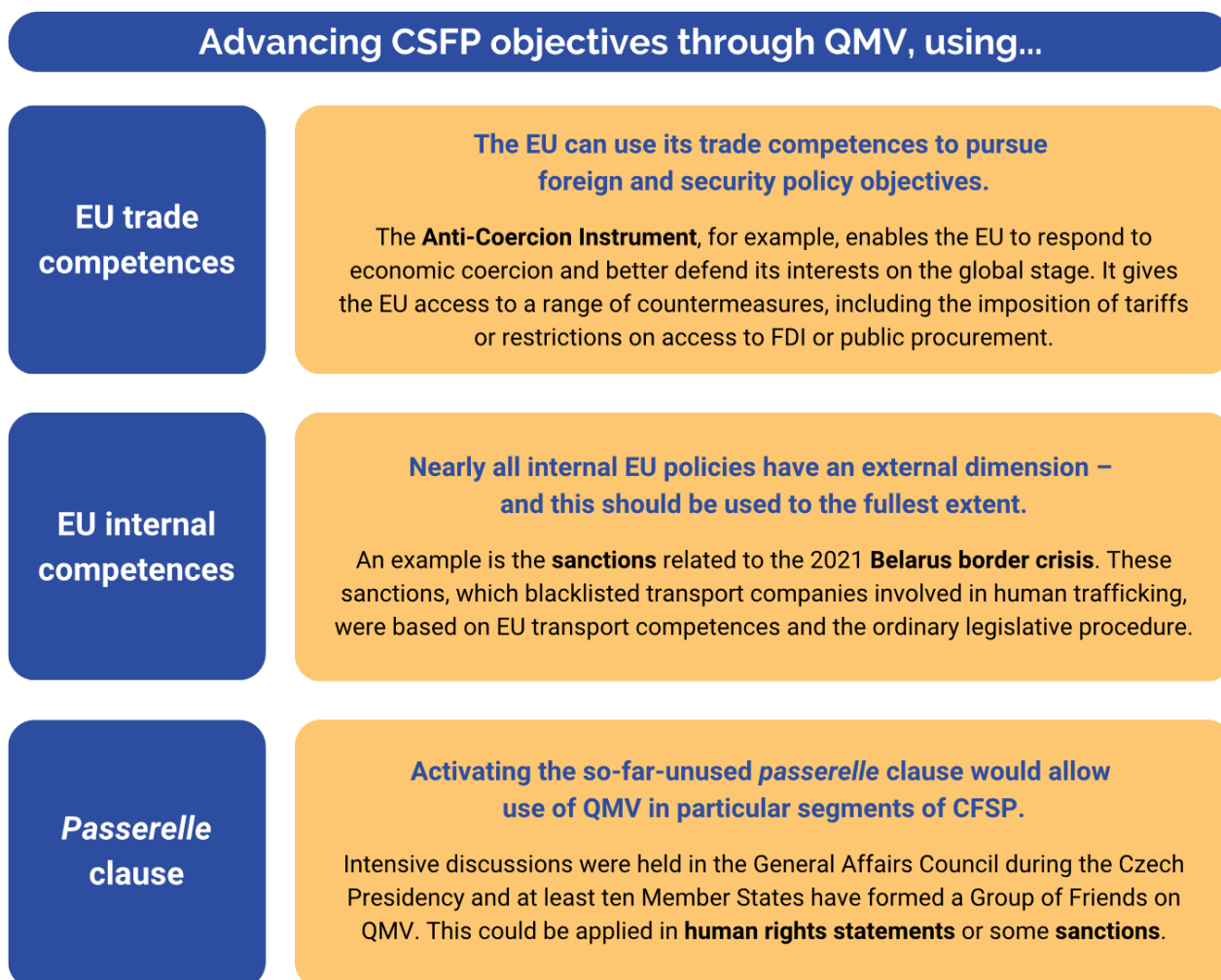
This shift can also take place by linking CFSP objectives to the EU's trade competences. From a [legal point of view](#), using the legal bases for trade to achieve non-trade objectives is feasible. This is in part because a common set of objectives has guided the whole of EU external action – including the CFSP and trade – since the entry into force of the Lisbon Treaty. One of the consequences of this common set of objectives is that the nexus between foreign policy and trade can be further enhanced: [nothing prevents the EU from using trade policy for non-trade purposes](#).

It remains a fact, however, that the EU’s competences for external action are scattered throughout the two Treaties. This creates challenges for policymakers because uncertainties can ensue on the choice of the appropriate legal basis for actions. If the Treaty revision initiative by the European Parliament in 2022 leads to a Convention, Member States should therefore consider further consolidating EU external action.



ENGAGE furthermore undertook **empirical research** on some of the options presented above, through interviews with national policymaking elites in 14 Member States. The data revealed a divide among Member States on the acceptability of various reforms, but shows that some room for negotiation exists. While Treaty changes did not find widespread support among policymaking elites, there was some **principled and, at times, proactive support for more rapid and flexible decision-making**.

Figure 1: Realistic options to activate QMV



POLICY RECOMMENDATIONS

Use EU trade competences to pursue CFSP objectives through QMV

By continuing to interpret the EU's external action holistically, doors open to more efficient decision-making procedures in policy areas that are clearly connected to the CFSP. In particular, the EU should continue to use its trade competences to promote CFSP objectives. Recent examples include the [Anti-Coercion Instrument](#), the [Anti-Torture Regulation](#), and the proposed [forced labour legislation](#). All are trade instruments – and are thus based on the ordinary legislative procedure in [Article 207 TFEU](#) – but at the same time, they pursue wider foreign and security policy objectives. The nexus between trade and foreign policy should be explored further, and the Commission in particular should lead the process of taking a holistic view on EU external action.

Rely on internal policies to exert external influence

The EU can also use its internal policies to pursue CFSP objectives. In adopting sanctions, for example, the EU should creatively explore alternative legal bases. In unique situations, it is possible to use EU transport competences to adopt sanctions. For example, the Commission's 2021 [proposal](#) to blacklist transport companies involved in human trafficking amid the Belarus border crisis is based on [Article 91](#) and [Article 100\(2\) TFEU](#). These provisions rely on the ordinary legislative procedure, thus allowing for the use of QMV in the Council. Another example where the EU has used “internal” legal bases to defend its security is the [Cyber Resilience Act](#): this regulation is based on [Article 114 TFEU](#), which gives the EU the power to harmonise internal market measures.

Keep pushing towards QMV in the CFSP framework

Meanwhile, EU institutions – in particular the Commission and Parliament – should continue to promote the idea of using QMV *within* the CFSP framework. The special CFSP *passerelle* clause under [Article 31\(3\) TEU](#) would allow for QMV in selected CFSP areas, for example, in relation to human rights statements or certain restrictive measures (sanctions). Activating QMV in CFSP matters has been high on the EU's agenda since 2022. The Czech Presidency (July-December 2022) organised several meetings between EU affairs ministers to consider the activation of the *passerelle* clause. And in the second half of 2023, several Member States established a [Group of Friends on QMV](#), portending further debates on this issue. The Group of Friends could develop steps that may be useful to convince more hesitant Member States. These steps might focus on existing treaty possibilities or specific CFSP instruments and policy areas.

Convince hesitant Member States through the QMV variations offered by the Treaties

To convince hesitant Member States, keep reminding them that even if QMV is expanded in CFSP, Member States will always have the possibility to use the emergency brake of [Article 31\(2\) TEU](#) and revert to unanimity. To give Member States time to experience how QMV can be used in selected areas of the CFSP, a step-by-step process will be necessary. The treaties offer possibilities for incremental improvements of the decision-making process – for instance, by opting for variations of traditional QMV, such as [reinforced QMV](#) (20 out of 27 Member States, rather than 15), or even [consensus minus two or three](#) for EU statements and declarations.

This policy brief has been drawn up by Viktor Szép and Ramses A. Wessel on the basis of research conducted in the ENGAGE project. For a more in-depth look at the research, please visit the ENGAGE website.

Project identity:

The ENGAGE (Envisioning a New Governance Architecture for a Global Europe) project examines how the EU – both the institutions and its Member States – can effectively and sustainably harness all of its tools in joined-up external action alongside the Common Foreign and Security Policy (CFSP) and its Common Security and Defence Policy (CSDP) to meet key strategic challenges and become a stronger global actor.”

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