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## Assessing Current CFSP Structures and Processes and Formulating Recommendations

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*Document Version*

Publisher's PDF, also known as Version of record

*Publication date:*

2023

[Link to publication in University of Groningen/UMCG research database](#)

*Citation for published version (APA):*

Wessel, R. A., & Szép, V. (2023). *Assessing Current CFSP Structures and Processes and Formulating Recommendations*. (Working Paper Series; No. 23). ENGAGE.

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**ENGAGE**

**Working Paper Series**

**No. 23 | April 2023**

**Assessing Current CFSP Structures  
and Processes and Formulating  
Recommendations**

**Viktor Szép & Ramses Wessel**

**ENVISIONING A NEW  
GOVERNANCE ARCHITECTURE  
FOR A GLOBAL EUROPE**



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement no. 962533.



## Executive Summary

This working paper comprehensively assesses the current governance structures, policy processes, instruments and tools of the European Union's (EU) Common Foreign and Security Policy (CFSP). It proposes reforms, formulates recommendations and indicates the level of complexity of the implementation of these recommendations. We argue that many of the recommendations do not necessarily require a Treaty change. Instead, EU institutions could use the "sleeping beauties" of the Treaties that currently exist, in particular the special CFSP *passerelle* clause under Article 31(3) of the Treaty on European Union, to shift from unanimity to Qualified Majority Voting (QMV). As a complete shift to QMV seems a bridge too far at the moment, we propose a step-by-step approach. Apart from voting rules, we also reveal that decision-making more generally might need to be looked at to make full use of CFSP, as well as a further investment in sharing the necessary intelligence information.

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# 1 Introduction

The European Union's (EU) Common Foreign and Security Policy (CFSP) is subject to "special rules and procedures" that include, among others, the requirement of unanimity (Articles 24(1) TEU and 31(1) TEU). These rules seem to stand in the way of an effective foreign and security policy. In ENGAGE [Working Paper 5](#), therefore, we assessed the specific legal nature of the CFSP and explored the legal possibilities to enhance CFSP decision-making procedures (Szép & Wessel, 2021). We argued that current EU Treaties should not necessarily be amended to achieve better outcomes. In fact, EU institutions may use the so-called "sleeping beauties" of EU Treaties, including the special CFSP *passerelle* clause that allows a shift from unanimity to qualified majority voting (QMV). The activation of that option is likely to contribute to a more efficient decision-making procedure in CFSP matters where rapid (re-)actions are often needed to guarantee the security of the Union and to promote and defend its own values in its neighbourhood and beyond.

At the same time, we also recognised that voting rules are not the only obstacles that stand in the way of effectiveness. Especially in the light of Russia's war in Ukraine, one area that needs further development is EU intelligence (Szép et al., 2022 (ENGAGE [Working Paper 10](#))). In fact, a credible foreign and security policy cannot be formulated and implemented without a powerful intelligence structure. And while in the last decades the EU has developed a number of capabilities to collect and analyse classified information – even though originally it was not supposed to become an intelligence community – the EU is still largely dependent on its Member States to get the sufficient amount of information for a more effective CFSP. The lack of information is not the only challenge since EU intelligence units seem to be understaffed and underfinanced. All these deficiencies need to be addressed, preferably in the short or medium term, in order to improve CFSP decision-making procedures and its efficiency.

That also led us to examine – apart from EU intelligence – an additional four cases to find out whether the EU's CFSP actually works in practice (Szép et al., 2023 (ENGAGE [Working Paper 20](#))). In particular, we explored the extent to which the CFSP is effective, coherent and sustainable, thus contributing to the overall ENGAGE project's main ambition to assess the different areas of EU external actions through these three dimensions. That working paper tested and refined a set of assessment criteria, partly derived from ENGAGE [Working Paper 3](#) (Sus et al., 2021), to identify specific obstacles to, as well as possibilities for, a coherent CFSP. We examined two geographical case studies (Iran and Western Balkans) and three thematic case studies (EU sanctions against Russia, the EU's role in international organisations and EU intelligence cooperation).

All these efforts, in the context of ENGAGE [Work Package 5](#) on the CFSP (and partly in [Work Package 6](#) on EU External Action Plus) have led us to conclude with a set of recommendations on how to further improve the EU's CFSP. After re-iterating the main challenges the EU's CFSP faces, we turn to our recommendations, including the complexity of implementation of these recommendations.



## 2 Diagnosis

The CFSP's "special rules and procedures" imply that the so-called "legislative procedures" cannot be used for CFSP and that the connected instruments, such as Regulations and Directives, are excluded. These rules, however, do not imply that CFSP (and CSDP) are not Union policies. On the contrary, Article 24(1) TEU clearly provides that "[t]he Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence" (emphasis added). And paragraph 2 underlines that "*the Union shall* conduct, define and implement a common foreign and security policy" (emphasis added). But what about the Member States? The third paragraph states that they "*shall support the Union's external and security policy* actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area". Other indications that CFSP clearly is a 'Union policy' can be found throughout the Treaty and are also underlined by, for instance, the fact that international agreements in the area of CSDP are concluded with third states by the 'EU only' and not as 'mixed agreements' that would be co-signed by the Member States. Ironically, the treaty provisions show us that CFSP is far less 'intergovernmental' than is often portrayed. The location of its provisions in the Treaty on the European Union (the more foundational part of the Treaty regime), rather than in the Treaty on the Functioning of the European Union underlines this.

These findings contradict the popular view that CFSP is completely in the hands of the Member States. What is most probably meant by observations like that is that the formulation of CFSP is largely in the hands of one of the EU's Institutions, the *Council*, at the expense of the extensive role the Commission and the European Parliament have in most other Union policy areas. As one of the Union's main institutions, the Council allows *the Union* to take decisions. In other words, what is different in CFSP is the *decision-making procedure* on the basis of which the Union can take decisions in the area of CFSP and CSDP. The outcome of that decision-making process is, however, part and parcel of the Union's external relations machinery and the so-called 'normalisation' of CFSP refers to the fact that it is increasingly difficult to separate foreign policy from other external relations policies and that an alignment of decision-making procedures is required. These findings are important to keep in mind when assessing proposals to improve the efficiency, coherence and effectiveness of CFSP.

### 2.1 Unanimity Standing in the Way of a More Effective CFSP?

Previous ENGAGE [Working Papers 5](#) and [6](#) have shown that an important element in CFSP decision-making procedure is formed by the voting rules in the Council (Szép & Wessel, 2021, 2022). Just like in every other policy area, the adoption of a Decision depends on the preferences of the members of the Council. In CFSP, however, most decisions need to be taken on the basis of unanimity, allowing *individual* Council members – rather than groups of members – to effectively block the Union to take actions, even if those actions would be



needed to tackle foreign and security policy challenges (Szép & Wessel, 2021). Indeed, between 2016 and 2022 we observed that Member States vetoed, threatened to veto or delayed CFSP decisions at least 30 times. From these 30 cases, 18 were related to Hungary, while the rest could be linked to eight other Member States (Greece (4), Cyprus (2) and Austria, Czech Republic, Italy, France, Malta and Romania (1 each) (Wessel & Szép, 2022)). Obviously, this is the data that could be found as the situations were reported in the media. In many more cases, however, threats of vetoes will not have reached the public domain, which leads to the conclusion that this is only the tip of the iceberg.

It is often forgotten that current EU Treaty provisions already provide for QMV in CFSP context.<sup>1</sup> Based on Article 31(2) TEU, the Council can use QMV in four cases. Two of these cases are partly used: in fact, some of the EU already existing sanctions regimes are modified by QMV. As research shows, approximately 25% of all CFSP decisions relate to the amendment of EU sanctions regimes (Wessel et al., 2021). Also, the Council appoints EU special representatives (EUSR) by QMV. Apart from these rather rare examples, the Council adopts its decisions by unanimity which concerns, for instance, the establishment of EU sanctions regimes, the establishment of military or civilian missions or even statements made at the United Nations on behalf of the EU.

For a long time, EU Member States have resisted to mainstream QMV in the CFSP context. Although the shift from unanimity to QMV remains a highly sensitive question, this resistance seems to slowly change due to the increasing number of CFSP blockages over the past years and the new types of foreign and security policy challenges that the EU faces, including Russia's war in Ukraine or a more assertive China. In short, while vetoes have always posed a problem in view of an effective CFSP and were deliberately put in the Treaty to allow Member States to block decisions that would be against their own foreign policy interests, situations of crises revealed the need for the Union to act more swiftly, also in comparison with the often much more immediate reactions by, for instance, the United States. Indeed, between 2013 and 2022, as a response to CFSP blockages, we observed 25 major calls to shift from unanimity to QMV in CFSP matters. Amongst EU institutions, the Commission and the Parliament (EP) are the most active promoters the use QMV in foreign and security policy issues. Already the Juncker Commission was quite engaged in promoting the idea of QMV and advocated to use it in the areas of human rights and civilian missions (European Commission, 2018). Current President Ursula von der Leyen mentioned the use of QMV already in her political guidelines and noted that she "will push for [QMV] to become the rule" in the CFSP (von der Leyen, 2019, p. 18). This pledge was later reiterated in her 2020 State of the Union speech (European Commission, 2020). Moreover, apart from simple declarations, President von der Leyen, together with High Representative/Vice-President (HR/VP) Josep Borrell, even submitted a joint proposal to the Council to adopt human rights-related sanctions by QMV (European Commission & High Representative, 2020). That proposal was rejected by the Council, but the case still shows that the Commission and the HR/VP are more assertive in promoting QMV in

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<sup>1</sup> QMV is reached when 55% of member states, representing at least 65% of the EU population, vote in favour of an EU act.



CFSP matters (EUobserver, 2020). Since 2013, the European Parliament has also been a highly engaged EU actor in promoting QMV in CFSP context. Most recently, in 2022, after the closure of the Conference of the Future of Europe, the EP adopted a resolution calling for a Convention to revise the Treaties that could lead to a shift from unanimity to QMV in areas such as sanctions (European Parliament, 2022). And the topic is still high on the agenda, with new Resolutions expected during 2023.

Apart from EU institutions, some Member States are also highly engaged in promoting a shift to QMV in the context of CFSP. In particular, for years Germany has been calling for mainstreaming QMV. Former German Foreign Office State Secretary Miguel Berger declared that CFSP “cannot work on the basis of a blocking policy. We need a serious debate on ways to manage dissent, including [QMV]” (Berger, 2021). Former German foreign minister Heiko Maas also argued that “we can’t let ourselves be held hostage by the people who hobble European foreign policy with their vetoes [...] The veto has to go, even if that means we can be outvoted” (Brzozowski & Makszimov, 2021). More recently, German Minister of State for Europe and Climate Anna Lührmann also said before a General Affairs Council meeting that “the topic of the EU’s ability to act is close to my heart. We need to get to making more decisions by qualified majority. That is, there should be less veto” (Lührmann, 2022). Finland also seems very open to mainstream QMV: in September 2022, Finnish Prime Minister Sanna Marin delivered a speech in the EP in which she called for the increased use of QMV in CFSP matters (Finnish Government, 2022).

The preferences of the Member States in relation to QMV are thus slowly starting to change. There is now an increased awareness that QMV could be used in at least limited areas of CFSP. Apart from rapidly changing geopolitical context, this change of attitude is often explained by the outcome of the Conference on the Future of Europe which suggested to abandon unanimity in all areas of EU policymaking, including in CFSP matters.<sup>2</sup> The Czech Council Presidency (1 July to 31 December 2022) was committed to the follow-up process and seized the opportunity to open yet again the discussion on whether QMV could be used by using the special CFSP *passerelle* clause. Thus, the Presidency organised several General Affairs Council meetings in order to map out the preferences of the Member States: it turned out that although there were some very hesitant voices, no Member State completely ruled out the possibility to use QMV in CFSP matters (EUobserver, 2022). The aim of these discussions was to activate the so-called *passerelle* clause which provides that QMV can be extended in areas other than those already defined by the Treaties on the basis of a (unanimous) European Council decision (Szép & Wessel, 2021). Minister for European Affairs of the Czech Republic Mikuláš Bek suggested that there could be a package deal on the issue and argued that “some of the former strong opponents of [QMV] are simultaneously strong proponents of the enlargement” (Bek, 2022), probably referring among others to Hungary that generally favours enlargement but rejects the mainstreaming of QMV in CFSP matters (Wessel & Szép, 2022).

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<sup>2</sup> The closing ceremony of the Conference on the Future of Europe was on 9 May 2022.





In general, Central European Member States (e.g. Hungary, Poland, Czech Republic) are much more reluctant in relation to the wider use of QMV in CFSP matters. Apart from them, as another ENGAGE paper has revealed, France also believes that legal technicalities are not the solution to the problem of the CFSP (Gubalova et al., 2022 (ENGAGE [Working Paper 16](#))). Instead, France emphasises the strengthening of a common strategic culture as a better way to overcome potential blockages. Other states, such as Cyprus or Greece, are generally not in favour of mainstreaming QMV in CFSP matters as the requirement of unanimity guarantees that their interests are not simply overlooked. Greece, however, may accept the use of the special CFSP *passerelle* clause that would enable to activate QMV in limited areas of foreign and security policy. Belgium, Estonia, Finland, Germany, Ireland, Italy, Slovakia and Spain would be, partly or completely, open to consider the broader use of the QMV in CFSP context (Gubalova et al., 2022; Wessel & Szép, 2022). Recently, Dutch Minister of Foreign Affairs Wopke Hoekstra also announced that “the Netherlands is [...] convinced we need to move to qualified majority voting in the areas of sanctions, human rights and civilian EU missions. This will dramatically increase our versatility” (Hoekstra, 2023). Thus, altogether there are at least 9–10 Member States that are expressly in favour of using QMV in certain CFSP matters. The remaining Member States are either neutral or remain against any use of QMV in CFSP matters. While the tide is thus changing, any extension of the list with exceptions to unanimity in Article 31 TEU will in the end need the support of all members of the European Council.

## 2.2 Intelligence at the Service of the CFSP

Apart from the governance structure and the processes in CFSP, we also examined how the improvement of EU intelligence could enhance CFSP decisions, including through the development of a common situational awareness of the threat landscape and a shared assessment of the strategic environment (Szép et al., 2022 (ENGAGE [Working Paper 10](#))). It has been long held in academic literature that a credible EU intelligence structure is a precondition for a more effective foreign and security policy (Hertzberger, 2007; Hill, 1993). After all, having the same information is key to be able to jointly take decisions. Yet, Member States have often been concerned about exposing their methods and sources of gathering data as they feared that this would amount to losing national autonomy in intelligence matters. In general, states favour cooperation on a more controllable, bilateral, case-by-case basis. The sharing of information is subject to common threat perception, mutual trust and a demonstratable added value (Ballast, 2017). That is why Member States have been wary of sharing competences in this field. This is also reflected in Article 4(2) TEU, which provides that “national security remains the sole responsibility of each Member State”. As the former Counter-Terrorism Coordinator confirmed: “[y]ou can’t get closer to the heart of national sovereignty than national security and intelligence services” (EURACTIV, 2005). For many years, there was not much willingness to change this status quo, partly because EU Member States “have difficulties to agree on a common perception and of categorisation of threats” (Brozowski & Afonso, 2022).

Despite these fears of sharing information, the EU has experienced a significant institutionalisation of intelligence cooperation in the past decades. This includes the EU’s



capability to gather imagery and geospatial intelligence (through the EU Satellite Centre), information on international crime (Europol and Frontex), on cyberthreats (CERT-EU, ENISA), through open source and social media analysis (the EU Joint Research Centre and EU Intelligence Analysis Centre, INTCEN) or information on third states' activities (by making use of around 140 EU Delegations around the world). In the field of foreign, security and defence policy, INTCEN and EUMS INT, that nowadays work under the auspices of the Single Intelligence Analysis Capacity (SIAC) in the EEAS, represent a clear sign of integration efforts. Moreover, there is willingness to further integrate information sharing capabilities with the creation of new units at the EU level. As was confirmed by Commission President Ursula von der Leyen during her 2021 State of the Union speech: "we have knowledge, but it is disjointed. Information is fragmented. This is why the EU could consider its own Joint Situational Awareness Centre to fuse all the different pieces of information. And to be better prepared, to be fully informed and to be able to decide" (von der Leyen, 2021).

Indeed, the further integration of EU intelligence structures has been endorsed at the highest political level. In 2022 HR/VP Josep Borrell further confirmed that the new Joint Situational Awareness Centre was under discussion in the context of the new Strategic Compass (Borrell, 2022). The Strategic Compass also made explicit references to SATCEN by declaring that "[b]y 2025, we will also strengthen the [SATCEN] to boost our autonomous geo-spatial intelligence capacity" (Council of the EU, 2022). Ursula von der Leyen in her 2021 State of the Union speech further argued that: "[w]e fall short if Member States active in the same region, do not share their information on the European level. It is vital that we improve intelligence cooperation" (von der Leyen, 2021). As a response to Russia's war in Ukraine, President von der Leyen further added that Commission "will make best use of our satellite surveillance capacity to detect potential threats" (von der Leyen, 2022).

Apart from EU institutions, individual Member States – through public declarations and additional financial contributions – endorsed the importance of SATCEN. High level defence officials from France, Spain or Italy have publicly acknowledged the strategic role played by SATCEN in the formulation of the CFSP (Szép et al., 2023 (ENGAGE [Working Paper 20](#))). Some Member States have even made voluntary, additional financial contributions to SATCEN. Luxembourg, for instance, provided €1.5 million as earmarked financial support for the purchase of imagery and equipment (Chronicle, 2022). This was because the activities of SATCEN have significantly intensified in the last years due the high demand for its services. Deputy Prime Minister François Bausch said that "Luxembourg's voluntary contribution of €1.5 million testifies to our conviction that SATCEN provides indispensable services, beyond just the military sector" (Szép et al., 2023, p. 51).

Indeed, the demand for SATCEN's services has significantly increased, partly due to recent geopolitical challenges, including a more assertive China or Russia's war against Ukraine. These external challenges are likely to further contribute to the development of EU intelligence structures and they will likely lead to even more demand for additional services. Between a period of more than a decade (2010–2021), we observed a sixfold increase in relation to SATCEN's output: whereas in 2010 SATCEN produced 706 outputs, in 2021 SATCEN's output



has increased to 4186. That trend was also confirmed by SATCEN Director Sorin Ducaru: “[d]emand for support has actually multiplied over the past years, and we estimate that this trend will further increase in the near future [...] The [EU] is increasingly taking over more responsibility for its own security and in the field of defence” (Szép et al., 2023, p. 49). The main users of the products include the EEAS/SIAC, EU missions and operations (in particular Operation EUNAVFOR MED IRINI), Frontex, the OSCE and EU Member States.

At the same time, the further integration of EU intelligence structures will require trust building measures and the development of common threat perception (Szép et al., 2022). Therefore, in the last couple of years, several steps have been taken to overcome the challenge of trust and to increase the common understanding of the main security threats. For instance, MEP Nacho Sánchez Amor has been particularly active in promoting EU intelligence cooperation and worked on a pilot project to that end (Brzozowski & Afonso, 2022). That effort led to the establishment of the European Diplomatic Academy in 2022 at the campus of the College of Europe. This pilot programme provides a common training for diplomats and is seen as a serious endeavour to create a common understanding of security threats as well as to foster intelligence cooperation in the EU. The Academy is also expected to respond to the EU’s “need[s] [for] an automatic mechanism of flow of intelligence from each Member State to the EU concerning foreign and security issues occurring outside the Union” (González et al., 2022). Another non-EU initiative was launched by French President Emmanuel Macron who in 2017 called for a European intelligence academy to strengthen links between the Member States. Subsequently, in 2019 the Intelligence College in Europe was founded in Paris as “a platform for reflection, engagement and outreach” (Intelligence College, 2020, p. 3) to facilitate cooperation at a non-operational level between the different intelligence authorities, practitioners and academics. The Intelligence College of Europe, among others, organises webinars, seminars and research on intelligence issues to contribute to a common understanding of external threats and to enhance a common intelligence culture and to improve joint situational awareness (Intelligence College, 2022; Korteweg, 2022; Pronk & Korteweg, 2021).

## 2.3 Geographical and Thematic Challenges

Apart from EU intelligence, in ENGAGE [Working Paper 20](#), we examined four additional cases to assess the overall effectiveness, coherence and sustainability of the CFSP (Szép et al., 2023). These three dimensions were examined in the case of EU’s relations with Iran and Western Balkans as well as to the EU’s role in international organisations and sanctions against Russia.<sup>3</sup> They all showed different levels of effectiveness, coherence and sustainability. Our overall assessment is that when all Member States agree on common measures, the EU can be quite effective. Negotiations in CFSP matters are mostly about finding a balance between much-needed EU actions and the acknowledgment of sometimes

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<sup>3</sup> These dimensions were also examined in the case of EU intelligence, the result of which was shared in the section 2.2.



real objections of certain Member States. But even if compromise is not possible, as was the case in relation to the oil ban against Russia, action by a smaller group of Member States is often possible. Indeed, the EU's sanctions against Russia are great examples of successful cooperation between Member States where most of the restrictive measures were adopted without much delay and where coordination with like-minded states, especially with the US, has demonstrated an almost unmatched level of sanctions cooperation. In turn, that created the pre-condition for an effective policy instrument, since closing the loopholes in different jurisdictions is necessary to avoid the circumvention of sanctions. Russia's financial and economic system are deeply affected by EU sanctions; however, EU sanctions were never intended to shut down the Russian economy. Still, they remain an essential tool in the medium and long-term to limit Russia's ability to finance itself and its war machinery, especially after the oil embargo came into force. The effectiveness of EU sanctions was also guaranteed by the fact that Member States have not adopted policies that would have gone against the EU's own sanctions policy, hence creating a largely coherent foreign policy response to Russia's war in Ukraine (Szép et al., 2023).

A high degree of (vertical and horizontal) coherence, however, does not always deliver effective external action. In the Iranian case, we demonstrated that after the 2018 US withdrawal from the JCPOA, the EU gradually lost its potential for effective action despite coordination between EU bodies and between the EU and its Member States being generally high. While we found that in the early period (starting from 2013) the EU was effective in drafting the JCPOA and implementing the deal, the 2018 US withdrawal presented obstacles to the "separation-of-files strategy" and demonstrated that the EU's effectiveness was largely subject to external conditioning factors. Moreover, apart from US extraterritorial sanctions, which put pressure on the EU to change its policies, the US' policy objectives in dealing with Iran significantly differed from the EU's, which further undermined the latter's capabilities to save the JCPOA. When it comes to the link between coherence and effectiveness, the EU's role in international organisations has shown a similar pattern. Indeed, coherence may not be enough for the EU to be effective in other international organisations. The EU has struggled to set the rules of the game in the UN Security Council which has mostly been shaped by China, Russia and their allies. Coherence is especially tested in relation to the UN Security Council where France rejects proposals to reform the power balance between the (permanent) members. Altogether, however, a more optimistic picture emerges as coordination and information sharing between EU Member States have improved in the UN Security Council, especially in relation to joint actions and statements. In the UN Human Rights Council, the EU has (also) been quite effective in that together with the Member States the EU has been the most active initiator of country-specific actions and resolutions and has been consistent in expressing concerns about human rights deteriorations in countries such as Russia or China. The EU's contribution to the creation of a special rapporteur on human rights and climate change can be seen as a success, too.

Concerning the Western Balkans, we observed different tendencies in Serbia and North Macedonia in relation to their alignment with CFSP decisions. We considered that, as part of its enlargement process, the EU's success could be measured by examining whether third



countries implement the EU's foreign policy decisions. In the Serbian case, we observed a significant decrease of willingness to align its foreign policy with the EU's, starting at almost 90% in 2013 and standing nowadays between 50-60%. We found that Serbia's unwillingness to join the EU's sanctions regimes against Russia has played a significant role in that deterioration. In contrast, North Macedonia's alignment with EU's CFSP decisions was high, achieving almost a full (100%) alignment in February 2022. Therefore, we came to the conclusion that the contrasting results in alignment with the CFSP by Serbia and North Macedonia suggest that the close link between the CFSP and the enlargement process in the Western Balkans does not necessarily facilitate the achievement of the EU's foreign and security policy objectives.

Structured political dialogues, including for example the Stabilisation and Association Council meetings, are used to discuss CFSP matters, including the call on Serbia to align with the EU's objectives or acknowledging the progress of North Macedonia. Similarly, the EU Special Representatives for Kosovo or for the Belgrade-Pristina Dialogue have also streamlined the work towards the EU CFSP objectives and further developed links with other policies. The regular work and presence of the EUSR increases the effectiveness of CFSP. Following the Russian war in Ukraine, the EU can use structured dialogue formats to communicate and pursue its CFSP objectives with a new impetus and regularity. Nevertheless, vertical incoherence related to enlargement can influence the rate of success of CFSP mechanisms. Enlargement fatigue, dissatisfaction with the integration of some newer MS, non-recognition of Kosovo by some Member States, bilateral disagreements and domestic pressures are some of the factors that have been slowing down the accession process in the Western Balkans. Partially, the vertical incoherence has led to diametrically different results, with Serbia sliding backwards on CFSP alignment and North Macedonia speeding up its own alignment. Additionally, a lack of vertical coherence on sanctions and restrictive measures in the case of Russia fuels poor sanction alignment by accession countries, such as Serbia, and hinders EU CFSP work in the region.



## 3 Recommendations

### 3.1 Three Possible Areas of Reform

#### 3.1.1 Use Existing QMV Possibilities

The Union has several possibilities to activate underused Treaty provisions in relation to QMV in CFSP context. On the one hand, Article 31(2) TEU already provides for four cases where the Union may use QMV. To a certain extent, these possibilities are currently being used, especially when the Council modifies existing EU sanctions regimes or when it appoints Special Representatives. However, the European Council has so far been reluctant to agree on the further extension of QMV, despite the fact that in 2020 the HR/VP and the European Commission already tried to trigger the activation of such provisions. On the other hand, Article 31(3) TEU provides that the European Council may unanimously adopt a decision stipulating that the Council shall act by qualified majority in cases other than those referred to in Article 31(2) TEU – what is often referred to as the ‘special CFSP *passerelle* clause’. **We recommend using this Treaty provision, partly because since the beginning of the Czech Presidency (July 2022) the activation of the special CFSP *passerelle* clause has been under serious discussion in the General Affairs Council and there seems to be a momentum.**

Apart from using the *passerelle* clause, **it is recommended that combinations are more frequently sought between CFSP and other external policy areas** (Christou et al., 2022 (ENGAGE [Working Paper 17](#)); Szép & Wessel, 2022 (ENGAGE [Working Paper 6](#))). One of the main aims of the Lisbon Treaty was to further integrate CFSP into the Union's overall external action. Article 21 TEU indeed merged the various external objectives of the Union. The Court of Justice has also accepted that the mere inclusion of foreign policy elements in a Union decision does not automatically trigger the CFSP decision-making procedures. Decisions on for instance trade or development cooperation that would include a CFSP element could therefore also be adopted on the basis of the ordinary decision-making procedures that would include QMV, alongside a role for the Commission and the European Parliament.

#### 3.1.2 Use the Constructive Abstention Option and Exemptions

Practice has revealed that ‘domestic constituency arguments’ often lie at the basis of vetoes in CFSP. It is not uncommon for certain Member States to veto a CFSP decision to convince their population that have not agreed with something that was invented by Brussels. Yet, despite unanimity being the default voting modality in CFSP matters, this does not imply that every Member State should vote in the affirmative if the Council seeks to adopt a CFSP decision. Constructive abstention under the second subparagraph of Article 31(1) TEU allows a (small group of) Member State(s) to abstain from a vote and decide not to apply a CFSP decision. Until the beginning of Russia’s war in Ukraine, constructive abstention had been invoked in only one case, by Cyprus in 2008. Since the 24th of February 2022, it has been triggered in the case of the European Peace Facility (EPF) in relation to three Member States, and also in the establishment of a Military Assistance Mission in support of Ukraine (EUMAM



Ukraine) in relation to one Member State (Wessel & Szép, 2022). **We recommend that constructive abstention becomes a more prominent option in negotiations on the adoption of CFSP decisions and EU statements in multilateral fora.** During a celebration of the 10th anniversary of the EEAS, the HR/VP encouraged Member States to use constructive abstention more frequently as a first step for a more efficient EU foreign policy (Laïci, 2021). Another example includes the call of Matti Nissinen, Head of the Unit for European Common Foreign and Security Policy at the Ministry for Foreign Affairs in Finland. Nissinen, during Finnish Council presidency, argued that “[i]n matters to be decided unanimously, member states could opt for ‘constructive abstention’. This means the action of the entire Union would not be blocked whenever a single member state chooses to be excluded from decision-making and action” (Nissinen, 2019).

A related possibility is the use of exemptions. In this modality, a derogation for a certain Member States would simply be built into the text of the decision, allowing that decision to be adopted by unanimity. It is certainly not ideal to grant exemptions to the Member States to deviate from EU sanctions regimes because to some extent they create a more fragmented Union. However, exemptions would allow the Union to adopt sanctions that otherwise would be impossible to implement by a group of Member States. As the sanctions against Russia have demonstrated, it is not always feasible to convince 27 Member States to adopt every single restrictive measure. In particular, the oil ban against Russia has proved to be a contentious issue where the Union granted exemptions to some Member States to alleviate their concerns on the impact of oil ban on their economies. Thus, **we recommend that exemptions are used as a way out of deadlocks where quick Union actions are needed.**

### 3.1.3 Build Trust for Intelligence Cooperation

An effective EU foreign policy depends on the willingness of Member States to share intelligence information. The impressive build-up by the Union of an intelligence infrastructure has certainly provided the Union and the Member States with an institutional framework to debate and exchange sensitive information. However, the dependence of the Union on Member State's willingness to provide the necessary 'deliverables' stands in the way of adequate responses that are sometimes needed for the Union to contribute to the solution of (security) crises. **We recommend that the Union invests more in trust-building, by further developing the existing procedures on the use of classified information and by jointly training intelligence officers.**

While sharing knowledge is the first step towards harmonising views, information in the EU is fragmented because Member States may not be willing to share all information at their disposal. The depth and breadth of information exchanges depends on the existence of common threat perceptions and common interests. To increase a common understanding of external threats, **we recommend creating entities where intelligence experts can come together to share views and expertise, thus contributing to developing a European strategic culture.** This could take the form of a platform for reflection, engagement and outreach. A good example is the Intelligence College in Europe, created in 2019, which brings together



intelligence officers and security experts who exchange good practices and ideas to enhance a common intelligence culture and to improve joint situational awareness.

## 3.2 Implementation of the Policy Recommendations

Broadly speaking, there are **four potential ways to implement QMV in the CFSP context**. The quickest solution would be to **use the special CFSP *passerelle* clause under Article 31(3) TEU which would allow the Council to use QMV in a specific area of the CFSP**. This is all the more important given that the Czech Council Presidency (July – December 2022) was highly active in promoting discussions on the potential activation of this *passerelle* clause. During these discussions no Member State has completely ruled out to gradually move to QMV but negotiations still continue to find a compromise solution. The EU could also use Article 31(2) TEU where the Treaties provide for QMV in certain specific cases. A common feature of all these options is that unlocking unanimity in CFSP matters requires a unanimous agreement in the European Council.

A second – and procedurally a bit more complicated – option could be **the use of the so-called general *passerelle* clause under Article 48(7) TEU since its first paragraph offers the possibility to move from unanimity to QMV in CFSP matters**. While EU institutions may decide to activate that provision, this would be more time-consuming compared to options defined by Article 31 TEU because changing CFSP decision-making procedure under Article 48(7) TEU requires the consent of the European Parliament while national parliaments can also raise objections of such moves. Indeed, if a national parliament makes known its opposition within six months, the decision of the European Council to shift from unanimity to QMV in CFSP matters shall not be adopted. That option may only be useful if the Union seeks to emphasise and perhaps increase the legitimacy of extending QMV in a sensitive field of policymaking.

A third option, which is the most time-consuming exercise whose outcome would be unpredictable, is **to change the EU Treaties**. Indeed, the European Parliament – mostly as a result of the Conference on the Future of Europe – adopted a resolution calling for Treaty change. By changing CFSP Treaty provisions, the Union may obviously gain more possibilities to use QMV in CFSP context but that revision, based on past experiences, cannot be done overnight. In addition, opening the Treaties would surely open other debates concerning many EU policy areas which could further delay the use of QMV in CFSP context.

Whatever option the Union chooses, **a gradual approach to shift from unanimity to QMV** is likely to be needed to avoid unnecessary aversion by the Member States and to find support at the highest political level. A gradual shift implies that QMV would not be introduced as a general rule overnight. Instead, Member States should be allowed to see and experience the use of QMV in a selected area of the CFSP and then gradually expanding that option to other areas. For instance, as a first step, the Union may decide to adopt human rights-related statements by QMV. As a second step, the Union may also decide to adopt certain kinds of sanctions regimes by QMV, especially those ones where the Union merely adopts travel bans or asset freezes (such as in the case of EU human rights sanctions regime). As a third step, the Union may go even further and make areas subject to QMV where the Treaties currently expressly





rule out the use of QMV, including in the area of EU defence. These are merely examples, but they show that QMV should be introduced in a step-by-step way that allows the Member States to experience and to draw lessons from the use of QMV in CFSP context. As this solution would simply extend the list of exceptions to the default unanimity rule, it is important to underline that the 'emergency break will remain intact: "If 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. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity" (Article 31(3) TEU).

Step one could also include a so-called **Super Qualified Majority Voting (SQMV)** rule. This rule is not completely alien to the current Treaties and simply requires a larger majority than the regular QMV. Thus, rather than defining a qualified majority as "at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States" (Article 238(3)(a) TFEU), it could be defined as "at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these State"(compare Article 238(3)(b) TFEU). Similarly, a compromise could be found in re-defining a so-called blocking minority. Currently, a blocking minority "must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained" (Article 238(3)(a) TFEU). In trying to reach a compromise, informal arrangements could be part of a deal to get to an acceptable rule in practice for a certain defined period of time. During a next phase, the number of policies could be extended and intermediate solutions, such as a SQMV or modified blocking minority rules, could be phased out. In general, the European integration process has shown to be based on such incremental changes, reassuring Member States that they will have time to see how things develop without including irreversible changes overnight. Finally, **we recommend that majorities are not just sought on the basis of calculations, but that the composition of the group of Member States supporting a certain decision is taken into account.** Hence, it makes sense that, despite the calculated majority, decisions are supported by the most affected Member States.

A fourth way to use more QMV in CFSP context is to **rely on the EU's trade policy competences to pursue wider foreign and security policy objectives.** To do that, the Union shall adopt instruments on the basis of Article 207 TFEU which prescribes the ordinary legislative procedure and hence QMV in the Council. Increasingly, this is being done by Union institutions. Recent examples of trade policy instruments pursuing foreign policy objectives include the Anti-Coercion Instrument or the Foreign Direct Investment Regulation. This option is also relatively easy to implement because the Union has the (exclusive) competence to adopt such trade instruments; however, based on Article 40 TEU, these instruments shall not affect the application of the procedures and the extent of the powers of the institutions in relation to CFSP acts.



Triggering constructive abstention is of course quite easy from a legal perspective, but its implementation is not without challenges. While we believe that constructive abstention does indeed allow a state not to lose face, while at the same time allowing the Union to proceed, it does not provide full freedom to the abstaining Member State to completely go its own way. It remains under a legal obligation not to take actions that would go against the EU's position. After all, the decision taken by the Council remains a "Union decision". This also implies that while the Member State concerned does not have to actively implement the decision, it must accept that "the decision commits the Union". Loyalty obligations laid down in the Articles 4(3) and 24(3) TEU furthermore underline that "[t]he Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area". While this may make Member States reluctant to opt for constructive abstention, we believe that during the negotiations certain safeguards can build in to help convincing the reluctant Member State to allow the Union to go ahead. After all, in all other policy areas Member States are used to the idea that Union decisions can only be taken by accepting compromises.

The improvement of EU intelligence can only be done progressively. Member States have often been concerned about exposing methods and sources to prevent losing national autonomy in intelligence matters. The fear of sharing information explains the dominance of the individual Member States rather than the collective EU in intelligence matters: most of the competences and capabilities to collect and analyse sensitive pieces of information are kept by EU capitals and are considered central in the maintenance of national security. This does not mean that it could not be improved: indeed, some immediate steps can be taken; the effects, however, must be measured in at least the medium term. As the recent example of European Diplomatic Academy has shown, the European Parliament – which does not have powerful competences in CFSP matters – has been able to launch an initiative that is expected to contribute to the common understanding of security threats and to train diplomats with European – and not exclusively with national – perspectives in mind. However, the effects of this new initiative should be measured at least in the medium term because the training of EU diplomats and the impact of their work obviously require time.

*This working paper corresponds to Deliverable 5.4 of the H2020 project ENGAGE.*



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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement no. 962533.