

European vetocracy? How to overcome the Wallonian CETA problem

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If it were possible to transduce political energy into thermal energy, then CETA would have considerably heated large parts of EU-Europe within the past two years. After the latest events, Wallonia would probably be able to grow bananas.

All this political energy, the thousands of hours of negotiation with Canada and about Canada, at political party conventions, in Parliament, before the Federal Constitutional Court – all in vain?

Well, this is what democracy is all about, opponents of CETA and globalization now announce. The latter can hardly believe their luck that at the eleventh hour and for intra-Belgian and only distantly related reasons – arguably only for the sake of a regional politician's ambitions -, the invidious CETA seems about to fold. What is overlooked is that this uncompromising veto position of a regional group could potentially oppose pretty much any agreement, including the ones for the protection of the environment, of the consumer or even of human rights.

Democracy, therefore, is not the issue here. Rather, the CETA/Wallonia issue is a vivid demonstration of overfederalization that leaves not only Belgium but the entire European Union unable to act. A minority rules the majority and the result is humiliation, the disgrace of the European project within and without. Anyone who still does not feel at least slightly concerned because of this development has clearly failed to understand the significance of European Integration for a peaceful side-by-side in Europe.

What, then, is the problem? Once more, and as so often in the CETA debate, those inclined to oversimplify the situation are the quickest to announce their superficial analysis of the situation. To design CETA as a mixed agreement was already a mistake, some people tell us now: People should have listened to the Commission which wisely advocated an EU-only agreement until July 2016.

A more short-sighted approach is hardly imaginable. After all, we are not dealing solely with a political question that can be decided either way. CETA includes areas that fall outside the EU's competences. This is why the agreement is a mixed one in which Member States come in as additional public international law parties to the agreement, filling in the gaps regarding competences.

Beyond that, [I still believe](#) that there are also sound political reasons for a mixed agreement. There is an intrinsic value to Member State participation. The legitimacy provided by the European level is not (yet) sufficient to carry an agreement such as CETA, once critical discussions have started. The European Commission has completely underestimated this issue. Meanwhile, the Free Trade Agreement with South Korea, essentially very similar to CETA, has entered into force without any complaints – one of the many irrational elements in this whole thing.

Still: the intense debate in the past months caused by the involvement of the Member States (mixed agreement) has in the end led to a significant improvement of various parts of the agreement with Canada. In this view, CETA was on a good track to becoming an example of an, albeit cumbersome, also intensive and ultimately successful multilevel democratic process. Until the Wallonians came, that is.

The moment when striving for improvement turns into a logjam marks the end of the democratic process and the intrinsic democratic value of the multilevel process evaporates. Wallonia does not provide any additional arguments against CETA that are regionally specific or that have not yet been sufficiently discussed and actually been rendered insubstantial through explanations and clarifications.

CETA without Belgium

There is, however, still a solution should Wallonia refuse to relent.

Why not simply close the agreement without Belgium? CETA as a mixed agreement between Canada, the European Union and 27 out of 28 Member States.

Nowhere is it written that mixed agreements need to be signed by all member states. An example: if the EU wanted to conclude an agreement with a third country on services in close proximity to the beach, and if there were gaps in the EU's competences, it would be thinkable and indeed plausible to involve only those Member States that actually have a beach.

CETA without Belgium: in technical terms, this could easily be implemented. As yet, this does not even concern the entry into force but the signature of the agreement. In the opening lines, one would have to cross out "Kingdom of Belgium" and elaborate in Article 1.1 CETA that "Member States" in the context of CETA refers to those Member States of the EU who participate in the agreement. The passages concerning Belgium would have to be removed from the annex and shelved for Belgium's potential future accession. In Article 30.10 CETA concerning a possible future EU Member State joining CETA, a sentence on the future accession of a current Member State could be added.

Didn't the Wallonians say – after 6 years of negotiations – that they need "more time"? Well, they would have all the time in the world. They could sort things out and join CETA in 6 months or 6 years. But the majority could move on. Sounds quite democratic.

Those parts of CETA within the competences of the Member States would then not apply to Belgium. The parts within the competences of the EU, however, would. Since the major part of CETA – quantitatively as well as qualitatively speaking – is within the competences of the Union, the practical consequences of such an arrangement would be limited. A precondition would of course be Canada's consent to such an unusual construct.

In the end, this would only mirror that, on the European level, the by far more important European part of CETA can be decided on in the Council of Ministers by qualified majority. Here, Member States do not have a veto. Correspondingly, Belgium could be outvoted in the Council.

This solution is not some kind of magic formula solving once and for all the strenuous search for capacity to act in the context of the EU common commercial policy. It can only be ultima ratio. The debates surrounding these agreements, the negotiations within the Union and the search for a common ground would thus continue.

But, to quote Joseph Weiler's famous formula, all this deliberating, debating and searching for compromise would take place "[under the shadow of the vote](#)", and no longer "[under the shadow of the veto](#)".

European democracy instead of European vetocracy.

The author is counsel to the German Federal government in the CETA-case pending at the German Constitutional Court. He expresses solely his personal opinion here.

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