Towards Qualified Majority Voting in EU Foreign Policy

Matthias Goldmann & Alberto Alemanno

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For several years, the EU's Common Foreign and Security Policy (CFSP) appeared to have a Hungary problem. More fundamentally, however, it has a Treaty-design problem. Article 31(1) TEU establishes unanimity as the default decision-making rule for the European Council and the Council in CFSP matters, subject to specified exceptions. This rule enabled Viktor Orbán to block or delay sanctions against Russia and support for Ukraine (including 90 billion EUR in loans), and to use Hungary's consent as leverage to extract concessions, most notably the release of frozen EU funds earmarked for Hungary.

Orbán's departure has not removed the underlying problem. If anything, it has made the CFSP's unanimity problem more acute and apparent. Slovakia has to some extent taken over Hungary's role as the Council's most consistently pro-Russian voice. More revealingly, Germany has blocked sanctions against Israeli politicians and EU trade restrictions targeting goods from Israeli settlements in the illegally occupied Palestinian territories.

These examples demonstrate that veto-induced paralysis is not the prerogative of one small or openly obstructionist, or simply rebellious, Member State. It is a structural consequence of a decision rule that allows any government to subordinate common European action to a particular national preference, including where Union inaction may carry significant geopolitical costs or impede compliance with international law.

The question, which is central to this post, is therefore whether the Treaty-based default of unanimity in CFSP remains normatively and institutionally defensible given its effects on the Union's capacity to act and to discharge its obligations under international law. If it does not, what room do the existing Treaties already provide for greater use of qualified majority voting without formal Treaty amendment?

We argue that the standard justifications for unanimity do not outweigh its structural costs and that the existing Treaties leave more room for qualified majority vote than current practice suggests. This post examines two routes: activation of the Article 31(3) TEU passerelle within CFSP, and recourse to non-CFSP legal bases under which qualified majority voting applies.

The Case for Unanimity, and Why It Falls Short

The standard defence of unanimity rests on Member State sovereignty: foreign policy, it is argued, touches on national identity in a way that other policy fields do not, while unanimity prevents larger Member States from dominating smaller ones.

From a geopolitical perspective, however, this comes at a considerable price. The unanimity requirement can prevent the EU from taking decisive action when it matters most, particularly on sanctions. It also gives external actors an opportunity to divide – and, in the worst case, undermine –the Union. They need only bring a single Member State over to their side to neutralize the common foreign policy of the other twenty-six.

The clearest recent illustration of these costs is the EU's paralysis over Israel and Palestine. In the first place, this causes the EU and its Member States to breach their international legal obligations: The International Court of Justice, in its 2024 Advisory Opinion on legal consequences arising from Israel's occupation, held that states are under obligations of non-recognition and non-assistance with respect to the occupation. Given that Israel violates peremptory norms of international law, by virtue of Article 40 ARISWA, states have to withhold trade privileges, including most-favoured-nation treatment from products originating in the illegal settlements, since these privileges can be suspended as a countermeasure against the

underlying wrong (see on this argument our recent letter to the President of the Commission). As the Court of Justice has made clear, the EU is "bound to observe international law in its entirety" (Case C-366/10, *Air Transport Association of America*, para. 101).

In the second place, there is a strategic dimension to this failure to respect international law. Like few other issues, Germany's steadfast opposition to EU measures on Israel forecloses the Union's emergence as a genuinely independent geopolitical actor capable of charting a "third way" in international relations grounded in international law. By observing international law even where it is inconvenient, the EU could build credibility as a global actor that is neither a mere appendix to the neo-mercantilist great-power politics of the United States, nor an imperial power in its own right.

A Structural Problem

It would be a mistake to treat this as a German pathology. Many Member States carry comparable domestic sensitivities that stand in the way of a coherent EU foreign policy: Latvia is demanding compensation for the impact of sanctions against Russia. French interests in the Maghreb, or Greek dependence on China, are further examples. Unanimity does not only occasionally derail EU foreign policy; it structurally incentivizes derailment by whichever Member State happens to have the deepest bilateral stake on a given issue.

The argument that unanimity protects smaller states is, on closer inspection, unconvincing. In practice, it is mainly the larger Member States that can credibly insist the EU respect their sensitive bilateral interests. Smaller states are far more often pressured into accepting the position of the larger ones. Unless, like Orbán's Hungary, they have simply stopped caring about their standing within the Union. States that want to work constructively on other European projects think carefully before reaching for the veto; they have to pick their fights. Qualified majority voting would, paradoxically, give them more of a voice, not less, by removing the outsized leverage that unanimity currently confers on the few states willing to use it.

Qualified majority vote could also be a game-changer for domestic politics within the larger Member States themselves. Every political system has its taboos – issues no domestic party is willing to touch. Germany's unconditional support for Israel, regardless of how starkly its conduct violates international law, is a case in point. German politics shows little sign of climbing out of this hole on its own, even as public support for the Israeli occupation has fallen sharply. In such cases, an external constraint, such as a qualified majority at EU level, may be the only realistic route to a change of course.

How to Get to Qualified Majority Voting Under the Existing Treaties

A formal Treaty amendment introducing qualified majority vote into CFSP is, for now, politically unthinkable – despite having gained some vocal supporters, including Mario Draghi and Ursula von der Leyen. Governments are unlikely to surrender this power voluntarily, and strong pro-European leadership at the head-of-state level is either absent or, when it comes to France, on its way out. Any attempt at Treaty change would likely produce a raft of opt-outs and horse-trading across unrelated dossiers – hardly a recipe for a more coherent foreign policy.

The more promising route is therefore to use the maneuvering space that already exists within the Treaties as they stand. For example, since March 2025, when Trump took office and threatened Ukraine, the European Council has effectively acted without Hungary. The President of the Council issued final statements that were endorsed by 26 Member States. It is unclear whether Hungary formally abstained (no declaration of Hungary was added) or whether the Council President simply proceeded without caring about Hungary. While Presidential conclusions are in a limbo between politics and constitutional law, operative decisions require a firmer foundation. Two options deserve closer scrutiny.

Option One: A Blanket Shift to Qualified Majority Vote under Article 31(3) TEU

The passerelle clause in Article 31(3) TEU – a CFSP-specific, simplified variant of the general passerelle in Article 48(7) TEU – allows the European Council to decide, unanimously, that the Council may henceforth act by qualified majority vote. Because such a decision would apply equally to every Member State, it would be equally advantageous – or disadvantageous – to all of them; no single Member State can be cast as its loser.

Would such a wholesale shift to qualified majority vote actually be compatible with the Treaties? Three possible objections deserve to be addressed.

First, does the wording of the passerelle permit a wholesale shift to qualified majority vote? It is difficult to argue otherwise. The TEU imposes no express limitation to the contrary and explicitly contemplates departures from unanimity, not least through Article 31(3) itself. Textual differences between Article 31(3) TEU ("case") and Article 48(7) TEU ("area or case") can hardly be invoked given the TEU's general lack of precision.

Second, would such a shift upset the institutional balance between the Council and the Commission? At most marginally. A blanket move to qualified majority vote could strengthen the Commission's practical leverage as agenda-setter, allowing it to calibrate proposals to attract a qualified majority. This does not, however, raise a constitutional concern: the Council remains free to reject any Commission proposal outright. Moreover, qualified majority vote would rebalance the relation between the Council and the European Council, as potential vetoes push issues up the ladder.

Third, would this shift infringe upon national identity? Hardly so, as Member States would first have to approve it unanimously. Moreover, Article 31(3) can arguably be read as preserving the safeguard in Article 31(2): a Luxembourg-compromise-style mechanism that allows a Member State, for vital and stated reasons of national policy, to prevent a qualified-majority vote from proceeding. Germany's Staatsräson, which arguably concerns German identity more than Israel, would probably satisfy that threshold. A blanket shift to qualified majority vote under Article 31(3) is therefore compatible with the Treaty's underlying concern for national identity, even if it would have limited practical significance – not least because Article 31(4) excludes decisions with military or defence implications from its scope.

Option Two: Moving Issues to Legal Bases Where Qualified Majority Vote Applies

The second – and arguably most promising – route is to move substantive decisions outside the CFSP and anchor them in TFEU legal bases where qualified majority vote is already the rule. There is substantial precedent for precisely this kind of migration away from unanimity.

The RepowerEU Regulation, which phases out fossil fuel deliveries from Russia, was adopted not under the CFSP but under Article 207 TFEU, as a trade-policy measure aimed at making the EU geopolitically less dependent. Similarly, the regulation permanently freezing Russian central bank assets held in the EU, adopted in December 2025, was based on Article 122(1) TFEU, as part of a broader Ukraine reparations loan package (the latter did not materialise because of unresolved international-law concerns).

This raises an obvious further question: could the exclusion of goods and services originating in the illegal settlements likewise be based on Article 207 TFEU? We have argued, in an open letter signed by over a hundred colleagues, that it can.

The relevant criterion is the "centre of gravity" test developed by the Court of Justice (Case C-244/17, *Kazakhstan Agreement*), which looks jointly at the content of a measure – what it actually does – and its aims. Article 207 TFEU must be used where a measure "relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade" (Case C-414/11, *Daiichi Sankyo*, para. 51; Opinion 2/15, *Singapore Free Trade Agreement*, para. 36). A further, complementary criterion favours the more democratically legitimated legal basis, as the Court

held in the *Titanium Dioxide* case (Case C-300/89, para. 18ff.) – and CFSP procedures are, as a rule, markedly less democratic than the ordinary legislative procedure that governs trade policy.

What, then, does it mean for a policy to "relate specifically to trade (...)"? The notion is a broad one. Crucially, the Treaties oblige the Union's Common Commercial Policy to be consistent with international law (cf. Articles 3(5) and 21 TEU and Article 207(1) TFEU). It follows that measures aimed at bringing trade rules into conformity with international law, or at protecting fundamental rights, are inherent aspects of trade policy – not some separate, extraneous category bolted onto trade for unrelated political ends. In the age of geoeconomics, drawing a clean line between purely economic and purely political purposes is no longer feasible. This has been recognized for monetary policy, where economic and political objectives overlap and can, at best, be distinguished by degree rather than by kind, as the *Gauweiler* saga illustrated. The real question is therefore not whether a measure has a political dimension, but whether it is being used to bring trade into line with the EU's own values, including international law, rather than being instrumentalised for ends that have nothing to do with trade.

The upshot is that no bright-line conceptual boundary separates the common commercial policy from other policy domains; the distinction is one of degree. Properly understood, commercial policy can encompass reasonable measures designed to secure compliance with international law.

The same reasoning can extend to country-wide sanctions regimes against Russia and Iran. If proportionality is treated as relevant to a measure's classification, even targeted sanctions against individuals might plausibly fall within the scope of commercial policy.

Conclusion

Neither route is a substitute for genuine Treaty reform that would place CFSP decision-making on a qualified-majority footing once and for all. Yet Treaty change is not on the table, and waiting for it would mean accepting years more of vetoes, ransom demands, and paralysis on precisely the files – Russia, Israel/Palestine – where the EU's credibility as a law-abiding international actor is most directly at stake. Deliberate reliance on alternative legal bases governed by qualified majority vote could go a considerable way toward freeing EU foreign policy from the veto of whichever Member State stands to gain most from obstruction.

ABOUT THE AUTHORS

Matthias Goldmann
Matthias Goldmann is Professor of International Law at the EBS University in Wiesbaden and a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg.

Alberto Alemanno
Alberto Alemanno is the Jean Monnet Professor of European Union Law at HEC Paris, a Visiting Professor at the College of Europe in Bruges and Natolin, and currently a Democracy Fellow at Harvard University. He is also the founder of The Good Lobby, a nonprofit organization dedicated to enhancing the advocacy capacity of civil society organizations within and across the EU.

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