Suspension of EU Association Agreements Does Not Require Unanimity

Merijn Chamon

19.07.2025 doi: 10.59704/b156b6dcf4080a38

In its meeting on 15 July 2025, the Council of the EU failed to adopt concrete measures vis-à-vis Israel, limiting itself to an "exchange of views on an inventory of possible follow-up measures". This hesitant approach stands in contrast to clear indications that Israel is in breach of its human rights obligations under Article 2 of the EU-Israel Association Agreement (AA), and to the EU's own obligation to work towards consolidating human rights and the principles of public international law pursuant to Article 21 TEU. While a suspension of the entire AA was never really foreseeable, an important question relates to the voting threshold within the Council that would apply to such a decision relating to the AA.

In this regard, it seems commonplace to remark that an association agreement concluded by the EU can only be suspended through unanimity in the Council (see e.g. here, here and here). This assumption is frequently cited (see e.g. here) to explain why a complete suspension of the EU-Israel AA will not be politically feasible. However, it is highly doubtful that a complete suspension of the EU-Israel AA would require unanimity in the Council. Presumably, the reasoning here is that Article 218(8) TFEU creates an exception for association agreements, prescribing that the Council must act unanimously in relation to them. Yet a textual and systematic reading of Article 218(8) TFEU, in conjunction with relevant CJEU rulings, rather suggests that the Council may suspend an association agreement by qualified majority voting (QMV) rather than by unanimity.

A textual and systematic reading points to QMV

Textually and systematically, it is important to note that Article 218(8) TFEU provides: "[t]he Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously [...] for association agreements [...]." By referring to "throughout the procedure", this rule (QMV) and exception (unanimity) logically refer to the different steps in the life of an international agreement regulated by the previous paragraphs 1-7. This means that the Council's decision on the authorisation of negotiations (paragraph 2), the adoption of the negotiating directives (paragraph 4), the signing (paragraph 5), the conclusion (paragraph 6), and the authorisation for the negotiator to adopt modifications (paragraph 7), must all be adopted with unanimity, in so far as an AA is at play.

Yet the provision in Article 218 TFEU governing the suspension of agreements is laid down in paragraph 9. Although the Court in Commission v Council (Kazakhstan) cast doubt on this (see further), interpreting Article 218 TFEU both textually and systematically would thus read the two scenarios governed by paragraph 9 as not being caught by the exception in paragraph 8. This also accords with the general rule applicable throughout EU law that exceptions to general rules must be interpreted narrowly, which the Court recalled in Commission v. Council (Protocol on Cultural Cooperation to the FTA with South Korea) when it had to review whether the Council gives an authorisation pursuant to Article 218(7) TFEU with unanimity or QMV (para. 45).

Lessons from UK v Council (EEC-Turkey)

Support for the conclusion that the Council can suspend an AA by QMV may be found in the jurisprudence of the Court of Justice. In UK v Council (EEC-Turkey), one of the questions at issue was whether the Council should determine the EU's position in the EU-Turkey Association Council by unanimity, or QMV. This type of decision is governed, just like that on the

suspension of agreements, by Article 218(9) TFEU. In casu, the Council had established the EU's position on the substantive legal basis of Article 48 TFEU (free movement of workers). The UK had argued that the aim of the EU-Turkey Association Agreement is not to integrate Turkey into the internal market, and that therefore the correct substantive legal basis was Article 79(2)(b) TFEU (which would have allowed the UK to invoke its opt-out). The Court largely disagreed with the UK: it rejected the UK's alternative legal basis and upheld the choice for Article 48 TFEU. However, it did find that Article 48 TFEU could not be the sole (substantive) legal basis, given that under the then and current state of the law, the EU-Turkey Association Agreement does not fully extend the free movement of workers to Turkey. As a result, the Court also held that Article 217 TFEU ought to have been relied on. Crucially however, it also noted that the omission of Article 217 TFEU did not affect either the content of the decision or the procedure through which the Council had acted (para. 65). The Court stated that "the contested decision does not relate to the conclusion of an association agreement or is not aimed at supplementing or amending the institutional framework of such an agreement, but is aimed solely at ensuring its implementation, it is, in accordance with the combined measures of the first paragraph of Article 218(8) TFEU and Article 218(9) TFEU, by a qualified majority and [...], that the Council should have, in any event, adopted the contested decision." (para. 66).

Still QMV despite Commission v Council (Kazakhstan)

The correct conclusion from that paragraph (and given the systematic reading of Article 218(8)-(9) TFEU elaborated above) was presented by the Commission in the Commission v Council (Kazakhstan) case (which did not involve an association agreement), where it argued "that any decision establishing a position to be adopted on behalf of the European Union in a body set up by an agreement, under Article 218(9) TFEU, must be adopted by qualified majority provided that the act which that body is called upon to adopt does not supplement or amend the institutional framework of that agreement." (para. 31). The Court rejected that plain reading however, ruling that the provision in Article 218(8) TFEU that prescribes unanimity "when the agreement covers a field for which unanimity is required for the adoption of a Union act", also applies where the Council decides on the position to be adopted by the EU in a body set up under an international agreement.

In Commission v Council (Kazakhstan), the Court thus regrettably confused the systematic reading of Article 218(8)-(9) TFEU, but crucially, this confusion does not affect the question of the suspension (rather than implementation) of association agreements, since it equally held: "It is only if a decision seeking to implement the association agreement is intended to supplement or amend the institutional framework of that agreement that its scope is such that it must be equated to a decision concerning the conclusion of an agreement amending the association agreement. That justifies such a decision being subject, pursuant to the exception laid down at the end of Article 218(9) TFEU, to the same procedure as that laid down for the conclusion of an association agreement, in which case the Council acts unanimously [...]" (para. 33).

If one applies this reasoning by analogy to the decision on suspending an association agreement, one can infer that such a decision's "scope" is not, as such, to equate it with a decision of the Council on the conclusion of an association agreement. Indeed, under public international law, suspension is temporary and relates to the operation of a treaty, and not to the treaty itself. Furthermore, a suspension (unlike possibly the scenario of implementation under Article 218(9) TFEU) does not alter the provisions of the treaty (para. 1).

Conclusion

In short, from a legal perspective, it does not appear necessary to limit the scope of the suspension to specific matters to be able to rely on QMV. A textual and systematic reading of Article 218(9) TFEU indicates that a vote with a qualified majority is, in any event, the rule for suspending the operation of international agreements. Of course, politically, the situation is different. Where the Treaties are not crystal

clear as regards voting rules, and even when they are, the Member States in Council proceed on the default rule of consensus. While mustering a QMV in favour of suspending the EU-Israel AA might not be politically realistic, it remains important to point out that the law does not require unanimity.

I would like to thank Graham Butler for comments on an earlier text. Any and all errors or omissions remain mine.

ABOUT THE AUTHOR

Merijn Chamon

Merijn Chamon is Professor of EU Law at the Vrije Universiteit Brussel and Visiting Professor at the College of Europe (Bruges).

SUGGESTED CITATION

Chamon, Merijn: Suspension of EU Association Agreements Does Not Require Unanimity, Verfassungsblog, 19.07.2025, doi: 10.59704/b156b6dcf4080a38.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250719-143146-0.