

# EU foreign policy decision-making: From unanimity to qualified majority voting?

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This report analyses the potential impacts of a change from unanimity to other CFSP decision-making modes by considering their added value as well as costs.

The report assesses 17 alternative policy options according to their likely impact on EU actorness (timeliness, efficacy, external recognition) and EU democracy (input legitimacy, throughput legitimacy, identification of EU member states as collective and avoidance of undue external influence), in particular in the areas of human rights, sanctions and civilian CSDP missions.

## Study

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## Executive summary

This report analyses the costs and benefits of alternative decision-making options for the CFSP, especially in the light of current discussions to move from unanimity to QMV. It **identifies and analyses 17 alternative policy options** (see Table 1), which are grouped into three distinct policy-making modes:

- Six decision-making options within the current legal framework (first column: policy-making mode as set by current legal framework)
- Eight decision-making options that require treaty change as they alter the way member states make decisions (second column: policy-making mode within existing transgovernmentalism but requiring treaty change)
- Three decision-making options that would not only require treaty change but also shift the institutional balance in a manner that goes beyond the existing transgovernmental mode of the CFSP (third column: policy-making mode beyond transgovernmentalism that requires treaty change).

Policy options of the first mode already exist for the CFSP, whereas the policy options of mode two and three present novel ways of making CFSP decisions.

Table 1: Policy-making modes under assessment

Decision-making options within current legal framework (see chapter 3.1)	Decision-making options with treaty change but within existing transgovernmental policy-mode (see chapter 3.2)	Decision-making options with treaty change beyond transgovernmentalism (see chapter 3.3)
Unanimity	Adjusted constructive abstention	Ordinary procedure in selected CFSP areas
Increased use of constructive Abstention	Reinforced enhanced cooperation	'Ordinary procedure light' in selected CFSP areas
QMV as follow-up to unanimous strategic decisions	QMV in selected CFSP areas	Delegation of selected decisions to HR/VP
'Luxembourg Compromise' as 'Brake Clause'	Enhanced QMV in selected CFSP areas	
Differentiated Integration	Super-QMV	
Progressive Activation of Passerelle Clause	QMV to activate passerelle clause	
	Flexible opt-in / opt-out system	
	Reverse decision-making	

Each policy option is assessed according to seven criteria drawn from the EU actorness literature and from EU democracy debates (see Table 2, for more details see also Table 10). This report **does not consider preferences by political actors** and does not consider political likelihoods of the different policy options. It provides an objective assessment of existing and innovative policy options according to the identified criteria.

Table 2: The seven criteria used for assessment

	Criteria for Assessment	Definition
Actorness dimension	<b>Timeliness</b>	The ability to respond in a timely manner, also towards changing contexts
	<b>Efficacy</b>	The commitment to pursue agreed positions and the ability to mobilise resources for this effect
	<b>External Recognition</b>	The recognition and acceptance of the EU as (from member states) distinct, credible and relevant international actor
Democracy & Identity dimension	<b>Input Legitimacy</b>	The ability for political participation by people and/or by their parliamentary representatives
	<b>Throughput Legitimacy</b>	Quality of democratic decision-making process in terms of accountability and transparency
	<b>Identification of Member States as EU Collective</b>	The buy-in and commitment of member states to the collective foreign policy process
	<b>Avoidance of Undue External Influence</b>	The avoidance of the risk of undue external influence

The likely impact of the policy options on each of the seven criteria is summarised in **Table 33** (see p. 88). As starting point it is indispensable to recognise that the **continued use of unanimity is not going to have a neutral impact** over time. Due to the current changes in global politics a continued use of unanimity is likely to further decrease timeliness and the external recognition of the EU as well as further deteriorate the identification of member states as EU collective.

The policy options under investigation show that the **alternative policy options come with different costs and benefits**. In most cases positive effects on (some of) the actorness criteria go hand in hand with negative impacts on (some of) the democracy criteria. Any overall assessment about the 'best' policy option therefore needs to carefully decide on the prioritisation between criteria. Furthermore, it is not just the outcome of the policy option in terms of who decides in favour/against, but the **process of negotiating the policy option** also has an impact on how the policy option impacts the assessment criteria.

Among the decision-making options that are possible within the current legal framework, the use of the **Luxembourg Compromise** as brake clause in combination with QMV as well as the **increased use of constructive abstention** and the **use of QMV as follow-up to unanimous strategic decisions** are likely to lead to a minor increase on at least half of the criteria. The **progressive activation of passerelle clauses** would be similar in the overall impact, but qualitatively different in its impact on single criteria. It would lead to a major increase in timeliness and a minor increase in efficacy and external recognition but comes with the price of decreasing throughput legitimacy and the identification of member states as EU collective. Most mixed and most extreme across all criteria are the results for **differentiated integration**.

The policy options, which would require treaty change but keep member states as the core decision-makers in line with the current transgovernmental nature of the CFSP, show a diverse impact across criteria as well, with overall more positive impacts on the actorness criteria than the criteria from the democracy-dimension. It is the **adjusted constructive abstention** that would lead to increases across all criteria, with the exception of efficacy via national means and input legitimacy. **QMV in**

**selected areas, enhanced QMV, super-QMV or QMV to activate the passerelle clause** would lead to increases across all actorness-criteria (timeliness, efficacy and external recognition) but also to a decrease of throughput legitimacy and the identification of member states as EU collective. Some of the negative effects could be mitigated by the stricter QMV threshold of enhanced QMV and super-QMV, but the negative impact on throughput legitimacy would remain. The impact of **reinforced enhanced cooperation, a flexible opt-in/opt-out system and reverse decision-making** would lead to more extreme differences across the seven criteria.

The policy options, which would require treaty change and go beyond transgovernmentalism by involving other actors next to member states in the CFSP decision-making, again do not show simple patterns but emphasize once more the complexity of how different policy options impact the seven criteria. While the **ordinary procedure** or the **ordinary procedure light** would lead to an increase of at least three democracy criteria (throughput legitimacy, identification as EU collective, avoidance of undue external influence), their impact on the actorness dimension is minimal or slightly negative. The **delegation of selected decisions to the HR/VP**, on the other hand, would lead to a major increase of timeliness and a minor increase of external recognition, but also in a minor manner decrease throughput legitimacy, the identification of member states as EU collective and the avoidance of undue external influence.

The assessment of these alternative CFSP policy options leads to following **key take-aways**:

➤ **There are no easy wins through the adjustment of decision-making modes.**

The potential impacts of alternative policy-making modes are not straightforward and depend on the prioritisation of assessment criteria. Increases on actorness criteria often come at costs on democracy criteria. At the same time the continued use of unanimity in the CFSP is likely to lead to a more negative impact in the future.

The introduction of QMV - in whatever form - is not a panacea for all the ills of EU foreign policy action. These policy options are likely to have a positive impact on EU actorness, but it would decrease throughput legitimacy and the identification of member states as EU collective. Enhanced QMV or super-QMV show a less negative impact on most criteria than the introduction of QMV in selected CFSP policy areas, what implies that some of the negative effects are mitigated by a stricter QMV threshold. The decrease of throughput legitimacy could be offset by other democratic channels like an increased EP involvement, but this in turn would decrease the positive impact across the actorness dimension.

➤ **Process matters as much as outcome for CFSP policy-making.**

In its current set-up, member states are the key actors in the CFSP not only during the decision-making phase, but also in the legitimation and implementation of CFSP decisions. Instead of focusing on the outcome only, attention needs to be paid to the negotiation processes, which facilitate a common strategic culture and a collective understanding for joint challenges. The latter binds member states in their commitments to shape regional and global politics as active members of a strong EU. An experimentation with other formats is to be encouraged, but the peculiarities of the CFSP need to be carefully taken into consideration.

➤ **An active EP scrutiny can contribute to the democratic governance of EU foreign policy.**

The role of the European Parliament would hardly change across most policy options, also because none of the policy options would increase input-legitimacy, i.e. the direct participation of citizens or their parliamentary representatives in the policy-making process (except for the ordinary

procedure). Especially among the policy options that would require treaty change, however, an involvement of the European Parliament could counterbalance negative impacts on throughput legitimacy (i.e. accountability and transparency). Furthermore, the European Parliament can provide the necessary impetus to kindle and nurture a necessary strategic debate across the European Union of what type of foreign policy actor the EU is meant to be.

➤ **The impact of policy options varies between civilian CSDP missions, human rights adoptions and sanctions**

The use of flexible decision-making modes like QMV would be less intrusive for civilian CSDP missions. For the adoption of human rights positions the collective support for a position is more crucial, but there is scope to consider, if EU actors could represent positions, even if not all member states support the proposal. Flexibility in decision-making is most difficult for the adoption of sanctions. If member states implement sanctions insufficiently because of their opposition to this decision, it would equally harm the effect of sanctions as well as the integrity of the EU. Furthermore, it would limit the opportunity of EU citizens to hold decision-makers accountable in case of negative retaliation effects.

➤ **Policy-making modes reflect the EU's finalité and the EU's international identity.**

The choice of policy options represents at its core a much bigger debate of what the EU is meant to be – in its political identity but also in its identity as foreign policy actor. If the EU is supposed to be more than a negotiation platform, then the identification of member states and their citizens as EU collective is highly salient. Yet such identification processes require a different approach than some of the efficiency arguments that are meant to strengthen EU actorness. If the EU aims to be considered an effective international actor and a promoter of democratic governance, an open debate about alternative and more flexible forms of collective decision- and policy-making in the CFSP are necessary, but equally necessary it is to consider what such the adoption of alternative policy options means for EU democratic governance.

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## List of abbreviations

CFSP	Common Foreign and Security Policy
CoFE	Conference on the Future of Europe
CSDP	Common Security and Defence Policy
EEAS	European External Action Service
EP	European Parliament
EU	European Union
EUCO	European Council
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission
OLP	Ordinary Legislative Procedure
PSC	Political and Security Committee
QMV	Qualified Majority Voting
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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## 1. Introduction

EU foreign policy has developed considerably since the introduction of the Common Foreign and Security Policy (CFSP) in the Maastricht Treaty nearly 30 years ago. After the disappointing inability for collective EU action during the Balkan wars, it was the Treaty of Amsterdam with its institutional adjustments that moved the CFSP forward. The creation of the post of the High Representative and its proactive first officeholder, Javier Solana, provided the necessary boost. Within the Council, the institutional processes have further evolved to facilitate member states' foreign policy cooperation, through the growing role of the Political and Security Committee<sup>1</sup>. The role of the High Representative/Vice President of the Commission (HR/VP) has been further strengthened with the Lisbon Treaty, and the European External Action Service has been established in 2010 as EU diplomatic service, with a dense network of EU delegations.

The **central role of member states in CFSP decision-making** has changed little despite these far-reaching institutional changes in the past 25 years. The CFSP is kept legally separate from the external relations presented in the TFEU, such as trade or development cooperation, and outside of the EU legal framework. While the former third pillar of Justice and Home Affairs (later: Area of Freedom, Security and Justice) has been gradually integrated in the 'Community method', the **CFSP remains a foreign policy cooperation system**<sup>2</sup> following the decisions of member states and supported by the HR/VP and other institutional actors. This said, the last three decades also saw a continued 'Brusselisation'<sup>3</sup> of the CFSP, with Council committees increasing their role in socialising member states and fostering the ability for collective decision-making<sup>4</sup>. The salience of this increased transnational interactions for the CFSP are also the reason why scholars suggest that the CFSP is 'not so intergovernmental after all'<sup>5</sup> and should rather be referred to as '**intensive transgovernmentalism**'<sup>6</sup>. On the other hand, Bickerton, Hodson and Pütter claim that in the past decade an integration paradox has evolved, where member states increasingly aim for more 'integration without supranationalism'<sup>7</sup>.

<sup>1</sup> Maurer, H. & Wright N. (2021a). [How much unity do you need?](#) Systemic contestation in EU foreign and security cooperation. *European Security* 30(3), pp. 385–401.

<sup>2</sup> Maurer, H. & Wright N. (2021a). *ibid.*

<sup>3</sup> Allen, D. (1998). Who speaks for Europe? in: Petersen, J. & Sjurson, H. (Eds.), *A Common Foreign Policy for Europe?* (pp. 41-58), Routledge.

<sup>4</sup> Juncos, A. & Pomorska, K. (2006). [Playing the Brussels game: Strategic socialisation in the CFSP Council Working Groups](#). *European Integration online Papers (EIoP)* 10. Juncos, A. & Pomorska, K. (2011). [Invisible and unaccountable? National Representatives and Council Officials in EU foreign policy](#). *Journal of European Public Policy* 18(8), pp. 1096–1114.

<sup>5</sup> Sjurson, H. (2011). [Not so intergovernmental after all?](#) On democracy and integration in European Foreign and Security Policy. *Journal of European Public Policy* 18(8), pp. 1078–95.

<sup>6</sup> Sjurson, H. (2011). [Not so intergovernmental after all?](#) *ibid.* Wallace, H. & Reh, C. (2014). [An Institutional Anatomy and Five Policy Modes](#). In: Wallace, H., Pollack, M. & Young, A. (eds). *Policy-Making in the European Union*. Oxford University Press.

<sup>7</sup> Bickerton, C., Hodson, D. & Puetter, U. (2015a). [The New Intergovernmentalism: European Integration in the Post-Maastricht Era](#). *Journal of Common Market Studies* 53, pp. 703–722. Bickerton, C., Hodson, D. & Puetter, U. (2015b) (eds). [The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era](#). Oxford University Press.

Overall, **European foreign policy remains a complex and hybrid system of cooperation**<sup>8</sup>. The EU's foreign policy hybridity refers 'to a political, institutional and legal structure derived from heterogeneous sources, or composed of elements of different or incongruous kinds'<sup>9</sup>. EU foreign policy is special in that its collective EU foreign policy remains in parallel to the national foreign policies of its member states<sup>10</sup>.

## 1.1. Why consider QMV in EU foreign policy?

The EU foreign policy cooperation system as established with the CFSP is often criticised for being too slow, too lowest-common-denominator-orientated or simply not fit for purpose for a regional or even international actor like the EU. Considering the number of national representatives and institutional actors involved in formulating a collective EU foreign policy the system delivers regularly, but in crises situations the EU is often lacking behind a needed timely and clear response compared to other state actors.

Additionally, the European Commission underlined in its 2018 communication on 'A stronger Global Actor: A More Efficient Decision-Making for EU Common Foreign and Security Policy' that 'in the past years, there have been certain cases, where a Member State or several Member States have, for reasons unrelated to human rights, delayed, blocked or diluted the Union's positions'<sup>11</sup>. Also in scholarly debates an increasing contestation and politicisation of EU foreign policy-making<sup>12</sup> gained strong attention, with explanations ranging from de-Europeanisation trends to claims about populist and domestic challenges in EU member states<sup>13</sup>. Barbé and Morillas, for example conclude that we see the dynamics of a more politicized and politically integrated foreign policy, which is also due to emerging politicisation in EU foreign policy.<sup>14</sup>

The increased politicisation but also the rejection of long-established procedural norms in the Council by individual member states<sup>15</sup> are considered key motivations to reconsider the decision-making mode of the CFSP. The Commission in its 2018 communication already proposed the expansion of QMV in CFSP in the policy fields of human rights, sanctions and civilian missions<sup>16</sup>, and

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<sup>8</sup> Smith, M. (2012). [Still Rooted in Maastricht: EU External Relations as a 'Third-generation Hybrid'](#). Journal of European Integration 34(7), pp. 699–715; Smith, M. (2018). [Does the Flag Still Follow Trade?](#) The Hague Journal of Diplomacy 13(1), pp. 41–56; See also Maurer, H. & Wright N. (2021a). *ibid.*

<sup>9</sup> Smith, M. (2012). [Still Rooted in Maastricht: EU External Relations as a 'Third-generation Hybrid'](#). *ibid.* p. 700.

<sup>10</sup> Orenstein, M. & Kelemen, D. (2017). [Trojan Horses in EU Foreign Policy](#). Journal of Common Market Studies 55(1), pp. 87–102.

<sup>11</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). Communication from the Commission to the European Council, the European Parliament and the Council, p. 5.

<sup>12</sup> Biedenkopf, K., Costa, O. & Góra, M. (2021). [Introduction: shades of contestation and politicisation of CFSP](#). European Security 30, pp. 325–343.

<sup>13</sup> Müller, P., Pomorska, K. & Tonra, B. (2021). [The Domestic Challenge to EU Foreign Policy-Making: From Europeanisation to de-Europeanisation?](#) Journal of European Integration 43(5), pp. 519–534.

<sup>14</sup> For a comprehensive literature discussion on internal contestation in EU foreign policy see Lovato, M. (2021). [The Internal Contestation of EU Foreign and Security Policy](#). JOINT Research Papers No. 1.

<sup>15</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms: the impact of politicisation on European foreign policy cooperation](#). European Security 30(3), pp. 367–84; Wessel, R. & Szép, V. (2022). [The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting](#). Study commissioned by European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at request of the AFCO Committee. PE 739.139.

<sup>16</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*

the European Parliament has repeatedly suggested the activation of passerelle clauses to use QMV or treaty change to decide by QMV in selected areas of CFSP<sup>17</sup>.

## 1.2. The aim of this report

This report **identifies and analyses 17 alternative policy options** that would address current shortcomings of EU decision making in foreign policy. The report situates these suggestions into the necessary understanding of policy- and decision-making modes in the EU (see chapter 2.1) and the peculiarities of the CFSP and its transgovernmental nature (see chapter 2.2). This background is needed as any institutional or procedural adjustment needs to be assessed in its systemic impact on the division of power and checks and balances. This is especially pertinent for the EU, where the question of democratic legitimacy has moved to the fore since the move towards a political Union in the 1990s.

The identified **policy options range** from decision-making opportunities within the current legal framework (see chapter 3.1) and options that alter the way member states make decisions in a transgovernmental manner and would require treaty change (chapter 3.2) to options that would not only require treaty change but also alter the institutional balance in a manner that goes beyond the existing transgovernmental mode of the CFSP (see chapter 3.3). This report did on purpose not only focus on existing options in order to open the mindset for what would be possible but also what implications such choices would bring for the nature of the EU as a foreign policy actor.

To be able to assess the implications of the different policy options for the CFSP, the report **develops assessment criteria** in consideration of two objectives: the improvement of **EU actorness** and the consolidation of **EU democracy**. The first one is self-explanatory in that the whole motivation to consider alternative policy-options has been driven by the motivation to improve EU actorness. Yet, any assessment also needs to consider the internal, democratic dimension of policy-making, because the EU is a political Union and a democratic system. The report therefore develops the assessment criteria in more depth in chapter 4, where it then also defines in detail the three criteria of **timeliness, efficacy** and **external recognition** from the EU international actorness debates and the four criteria of **input legitimacy, throughput legitimacy, identification of EU member states as collective** and the **avoidance of undue external influence** from the internal democracy debate.

The detailed **assessment of each of the 17 policy options according to the seven criteria** is the core of the report (chapter 5). Each policy option is scored in an overview table according to the likely impact the use of the policy has on the criteria, and we consider if this impact varies across three distinct policy subfields: the adoption of **human rights positions**, the adoption of **sanctions** or the adoption of **civilian CSDP missions**. The final part 6 draws conclusions from this in-depth assessment and discusses the key findings of the report.

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<sup>17</sup> European Parliament (2021b). [Report on the implementation of the common foreign and security policy - Annual Report 2021](#); European Parliament (2022). [European Parliament Resolution of 9 June 2022](#) on the Call for a Convention for the Revision of the Treaties.

## 2. Policy- and decision-making in EU foreign policy since the Lisbon Treaty

Policy- and decision-making in EU foreign policy is part of the wider discussion on how decisions in a polity like the EU can be made in an efficient and democratic manner. The treaty reforms of the past 50 years of European integration reflect the changing nature of the EU as a polity. With the increased constitution of the EU towards a political Union, the policy- and decision-making procedures moved from purely intergovernmental decisions in the Council to the 'community method', where the EP and the Council share decision-making powers, the European Commission acts as executive, and the European Court of Justice adjudicates. The Treaty of Maastricht was a major milestone, while the Treaty of Lisbon cemented the ordinary legislative procedure as the main policy-making mode in the EU.

Policy- and decision-making features provide key indicators for the type of political system that they are used in. In democratic systems, checks and balances and/or separation of powers are principles that represent the underlying idea that power must not be centralised to an extent that it leads to the danger of authoritarian rule and that there need to be ample opportunities for holding political decision-makers accountable. This is similar to the expectation of democratic political systems needing to achieve a level of input, output and throughput legitimacy<sup>18</sup>.

Any change in decision-making mode in a democratic system therefore needs to consider the effect such an alteration has on the wider political system<sup>19</sup>, and its democratic control and oversight functions. Possible checks and balances need to be adjusted to balance a possible shift of power. This is particularly relevant for the EU where we see a carefully balanced system of checks and balances that emerged particularly since the inception of the EU as a political Union with the Treaty of Maastricht. The multi-level system of the EU offers a double legitimisation that reflects the peculiarity of the EU as a political system, where citizens can hold their national policy makers accountable as part of the EU legislator (Council) or as strategic decision-makers (European Council), but they can also hold their directly elected Members of the European Parliament accountable, who are involved in the ordinary legislative procedure as co-legislator. Although – or even more so because of the CFSP being outside of the ordinary legislative procedures – any shift of power through a change in decision-making modes needs a necessary rebalancing.

The debate on introducing QMV in the CFSP must thus not only be discussed in terms of the possible benefit in terms of effectiveness that it might bring to the EU, but this decision also needs to be situated in the wider debate on policy-making in the EU and what the CFSP is meant to be in comparison to EU public policy-making modes.

The next part therefore provides a quick overview of policy- and decision-making modes in the EU since the Lisbon Treaty, before we dive more closely into the evolution and today's nature of the CFSP.

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<sup>18</sup> Schmidt, V. (2020a). [Conceptualizing Legitimacy: Input, Output, and Throughput](#). In Europe's Crisis of Legitimacy. (pp. 25-55). Oxford University Press.

<sup>19</sup> Lijphart, A. (2012). [Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries](#). Yale University Press.



## 2.1. Policy and decision-making in the EU since the Lisbon Treaty

Today we distinguish four different policy-making modes in the EU<sup>20</sup> (see Table 3). Within the EU legal framework the main policy-mode is the Community method, composed of the legislative triangle of European Commission (who proposes) and European Parliament and Council of Ministers (who decide jointly). In few cases the centralised policy-making mode is used (i.e. in competition policy the Commission is authorised to decide on mergers; for the Eurozone governance the ECB sets the interest rates), and there is also the soft version of governance in the form of the open method of coordination<sup>21</sup>. Outside of the integration framework and in the realm of foreign policy cooperation we find the fourth policy-mode with intensive transgovernmentalism. Within the different policy-making modes distinct modes for making decisions are applied.

Table 3: Four modes of policy-making in the EU<sup>22</sup>

Policy-Making Mode	Description	Decision-Making Mode
Community Method	Legislative triangle with Commission proposes, EP and Council decide; ECJ adjudicates.	Consultation
		Consent
		Ordinary Legislative Procedure
Centralised Policy-Making	Commission or ECB decide	
Intensive Transgovernmentalism	Member states as sole decision-makers	Unanimity / consensus by Member states
Open Method of Coordination	No decision on EU level	

The most widely used decision-making mode since the Treaty of Lisbon is the **ordinary legislative procedure** (OLP, Art. 294 TFEU), where upon the proposal of the European Commission the EP and the Council in a three-stage reading procedure aim to find a compromise on the legislative text. Within the OLP, the Council can adopt its position by qualified majority, and the EP need to reach absolute majority. In cases where the Commission has delivered a negative opinion on previous amendments, the Council would need to decide by unanimity (Art. 294(8), TFEU).

Art. 16(4) TEU specifies how a **qualified majority** can be reached in the Council: 'a qualified majority shall be defined as at least **55 % of the members of the Council**, comprising at least fifteen of them and representing Member States comprising at least **65 % of the population** of the Union. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained'<sup>23</sup>.

There are few instances as well, where **QMV is calculated differently**, as Art. 238 TFEU specifies. First, when the proposal is not coming from the Commission or the HR/VP, 'the qualified majority

<sup>20</sup> Nugent, N. (2017). [The Government and Politics of the European Union](#). 8<sup>th</sup> edition. Bloomsbury Academic.

<sup>21</sup> Nugent, N. (2017). [The Government and Politics of the European Union](#). *ibid.*; Radaelli, C. (2003). [The open method of coordination: a new governance architecture for the European Union?](#) Swedish Institute for European Policy Studies 2003:1.

<sup>22</sup> Nugent, N. (2017). [The Government and Politics of the European Union](#). *ibid.*

<sup>23</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M016>

shall be defined as at least **72 % of the members of the Council**, representing Member States comprising at least **65 % of the population** of the Union'. Secondly, in case not all member states participate in the Council vote, Art. 238(3) TFEU provides an adjusted formula on how to calculate QMV, where at least 55% of participating member states compromise at least 65% of the population of these states or, if the proposal does not come from the Commission, where at least 72% of participating member states represent at least 65% of the population<sup>24</sup>.

Next to the ordinary legislative procedure, the Lisbon Treaty also still includes some **special legislative procedures**, which are listed among the different policy areas in the treaties as derogations from the ordinary legislative procedure<sup>25</sup>. They are the last remains of the evolution towards joint decision-making by the Council and the EP in the past fifty years. The early years of European integration were marked by sole decision-making power in the Council. The consultation procedure was the first procedure to give the power to propose amendments to the EP, whereas the consent procedure, introduced with the Single European Act (1986), gave the EP first time veto power. The Single European Act also introduced the cooperation procedure as forerunner to the co-decision procedure, which was introduced with the Treaty of Maastricht (1992). It was only then that the EP was put on equal footing with the Council in adopting legislation.

Since the Lisbon Treaty, the use of **QMV in the Council is mostly tied to the ordinary legislative procedure**<sup>26</sup>, whereas in the special legislative procedures both unanimity and QMV are foreseen for the Council<sup>27</sup>. However, QMV in the Council outside of the OLP is only used in specific situations, for example where 'Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries' (Art. 78(3) TFEU) or 'where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control' (Art. 122(2) TFEU). Other exceptions for QMV use in the Council concern the adoption of common custom tariffs (Art. 26 TFEU)<sup>28</sup>.

Despite QMV being strongly tied to the ordinary legislative procedure, which is used in most policy areas nowadays, there is a **strong consensus seeking attitude in the Council** of Ministers of the EU. Matilla<sup>29</sup> showed in a study of 2008 that even in 82% of cases where the Council could decide by QMV member states still try to reach consensus. Generally, it is assumed that member states do not like to out-vote other member states, as they might be in a similar situation in the future and would then appreciate others to consider their concerns. Also, sometimes the argument is put forward that for EU decisions to be effective, all member states need to implement, and member states whose

<sup>24</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E238>. Also here a blocking minority is defined as follows: '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.'

<sup>25</sup> 'Examples can be found regarding measures in the field of discrimination (Article 19 TFEU), European citizenship (Article 21–23(3) TFEU), or the liberalisation of capital movements (Article 64(3) TFEU). Special procedures also apply for the amendment of the treaties and the accession of new Member States (Articles 48–40 TEU).', Wessel, R. & Szép, V. (2022). [The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting](#). *ibid*; For detailed analysis see also Böttner, R. (2022). [Special legislative procedures in the Treaties](#). *ibid*.

<sup>26</sup> For in-depth discussion of special legislative procedures in the EU see Böttner, R. (2022). [Special legislative procedures in the Treaties](#). Institutional balance and sincere cooperation. Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee. PE 738.331. Brussels.

<sup>27</sup> Böttner, R. (2022). [Special legislative procedures in the Treaties](#). *ibid*.

<sup>28</sup> For a full list see Böttner, R. (2022). [Special legislative procedures in the Treaties](#). *ibid*, p. 72.

<sup>29</sup> Mattila, M. (2008). [Voting and Coalitions in the Council after the Enlargement](#). In Naurin, D. & Wallace, H. (eds). *Unveiling the Council of the European Union: Games Governments Play in Brussels*, Palgrave Studies in European Union Politics. (pp. 23-35). Palgrave Macmillan.

concerns are not considered are less likely to implement in the most appropriate way. Scholars explain this consensus seeking attitude by member states not wanting to be blamed<sup>30</sup> or also through the socialisation of member states to accept consensus-seeking behaviour as a procedural norm in the Council<sup>31</sup>.

## 2.2. Transgovernmental policy- and decision-making in the CFSP

Foreign policy-making has traditionally been **more executive-driven with less public scrutiny** and less parliamentary interest. Most of the everyday policy-making happens outside of the public limelight and transparency is often said to be trumped by the need for discretion or secrecy, e.g. to make negotiations work. Also the implementation of foreign policy decisions is different from other (public) policy areas, as the main instrument of foreign policy is political communication, diplomatic interactions or the negotiation of legal agreements for future cooperation. Economic and (sometimes) military instruments can be deployed too.

Also on EU level **EU foreign policy has been a 'policy apart'**<sup>32</sup>. When it was formally introduced with the Treaty of Maastricht (1992), it was the pillar structure that made the compromise between member states possible to coordinate foreign policy aspects within the second 'intergovernmental' pillar of the CFSP, but not integrate them within the legal and institutional framework of the then European Community. No involvement of the European Commission or the European Court of Justice was the main credo, with member states staying firmly in the driving seat of foreign policy discussions. After the failure to project a strong European response towards the war in Yugoslavia in line with the ambitions formulated with the inception of the CFSP only a few years earlier, it was the Treaty of Amsterdam that brought some institutional innovations with the introduction of the post of the High Representative and the mechanism of constructive abstention. The Treaty of Lisbon aimed for another institutional reform and merged the roles of the Commission for External Relations with the post of the High Representative, creating the first institutional position that is part of two EU institutions: the High Representative and Vice-President of the European Commission (HR/VP). It also created the European External Action Service (EEAS) and turned European Commission delegations into the diplomatic network of EU delegations. The EEAS and its delegations are meant to support the work of the HR/VP as EU diplomatic service.

The **central role of member states in CFSP decision-making** has changed little despite these far-reaching institutional changes in the past 25 years. The CFSP is kept legally separate from the external relations presented in the TFEU, such as trade or development cooperation, and outside of the EU legal framework. The CFSP remains a foreign policy cooperation system<sup>33</sup> following the decisions of member states and supported by the HR/VP and other institutional actors, with member states keeping their national foreign policies in parallel to their collective EU foreign policy ambitions. The latter is one of the key distinct features of EU policy-making: there has not been any centralisation and delegation of foreign policy decision-making power to one entity representing the whole of the EU, but the CFSP is a cooperation system, where member states pursue their national foreign policies next to their coordination on EU level.

<sup>30</sup> Dehousse, R., Novak, S. & Bendjaballah, S. (2017). [Consensus under pressure. The evolution of conflict in the EU legislative process](#). *Politique européenne* 58, pp. 44–70; Novak, S. (2013). [The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union](#). *Journal of Common Market Studies* 51(6), pp. 1091–1107.

<sup>31</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), *ibid.*

<sup>32</sup> Maurer, H. & Wright N. (2022). [Foreign Policy](#). In Graziano, R. & Tosun, J. (eds). *Elgar Encyclopedia of European Union Public Policy*. Edgar Elgar.

<sup>33</sup> Maurer, H. & Wright N. (2021a). *ibid.*

This leads to **considerable ramifications in terms of EU foreign policy actorness**: First, the EU cannot make decisions on behalf of its member states, but the EU only has a foreign policy position once all member states agree. Secondly, the EU institutions and in particular the HR/VP supported by the EEAS and the European Commission are meant to implement the decisions taken by the member states, but member states need to support their implementation also through their national means and channels for EU messages to have a wider leverage. Thirdly, the EU is the only international institution with such a dense and institutionalised form of foreign policy negotiations. The main venue for foreign policy discussions is the Council of Ministers in the EU, with the Political and Security Committee still as the linchpin, where all foreign policy discussions come together. In the past decade we saw also a stronger foreign policy dimension in the European Council discussions, but the everyday decision-making happens within the structures of the Council of Ministers.

The **standard decision-making process in the CFSP** since the Lisbon Treaty looks as follows. The HR/VP supported by the EEAS or member states can set the agenda and put forward proposals for discussion. The HR/VP chairs the Foreign Affairs Council, and an EEAS representative of the HR/VP chairs the (Political and Security Committee (PSC) and the related Council working groups. The HR/VP also joins European Council meetings and is therefore ensuring consistency between the different political levels. The European Council provides the strategic direction for the EU also in foreign policy issues, whereas the main decision-making body is the Foreign Affairs Council (FAC).

**No laws are adopted in the CFSP, but (political) decisions.** The FAC mostly agrees by unanimity, although also here a consensus-seeking attitude prevails. The Amsterdam Treaty introduced the mechanism of 'constructive abstention' that allows member states to opt-out from a proposed decision without blocking the rest of the EU to move forward. More details from the treaty provisions are presented below in chapter 3.1. While the CFSP decision-making procedures have not changed, we must not forget that in other areas the European Parliament gained more formal power over time. For the adoption of international agreements, for example, the consent of the European parliament is needed nowadays.

Despite the persistence of the CFSP decision-making mode, the last three decades also saw a **continued 'Brusselisation' of the CFSP**<sup>34</sup> and of EU foreign policy-making more generally. This means that we see that Brussels and the negotiations between member states and the coordination with other EU institutional actors became the main venue for foreign policy deliberations. Member states got socialised into the understanding that instead of first fixing their positions on international events, it is appropriate to first coordinate with the other EU member states, also in order to harness the weight that comes with the voice of the whole of the EU. Especially Council committees play a significant role in socialising member states and fostering the ability for collective decision-making<sup>35</sup>. The salience of this increased transnational interactions for the CFSP are also the reason why scholars suggest that the CFSP is 'not so intergovernmental after all'<sup>36</sup> and should rather be referred to as 'intensive transgovernmentalism'<sup>37</sup>, in order to showcase that the interactions between member states in their foreign policy deliberations are quantitatively and qualitatively different from negotiations in other international fora.

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<sup>34</sup> Allen, D. (1998). Who speaks for Europe? *ibid.*

<sup>35</sup> Juncos, A. & Pomorska, K. (2006). *ibid.* Juncos, A. & Pomorska, K. (2011). *ibid.*

<sup>36</sup> Sjurssen, H. (2011). [Not so intergovernmental after all?](#) *ibid.*

<sup>37</sup> Sjurssen, H. (2011). [Not so intergovernmental after all?](#) *ibid.* Wallace, H. & Reh, C. (2014). [An Institutional Anatomy and Five Policy Modes.](#) *ibid.*

### 3. Collection of policy options for more flexibility in the CFSP

This part identifies and maps a wide range of possible options for incorporating more flexibility in CFSP decision-making. The options have been collected through a comprehensive literature review. Recent EP publications<sup>38</sup>, think tank reports and discussion papers<sup>39</sup> about the use of QMV in CFSP have been considered as well as more general academic discussions on the impact of decision-making procedures on negotiation fora.

The policy options in a next step have been categorised according to the EU legal framework and are going to be presented here in three categories (see Table 4 for overview): First, existing options for more flexible decision-making within CFSP are presented (see chapter 3.1 and

Table 5). These options would be possible within the current legal framework but have in practice not been used to the full possible extent. This includes, for example, the possibility of member states to agree unanimously to activate the passerelle clause for selected CFSP areas or the use of QMV as follow-up to unanimous strategic decisions of the European as envisaged in Art. 31(2) TEU. A stronger use of these options that would be possible according to the existing treaty provisions would need the political commitment and will from EU member states.

Table 4: Differentiation of policy options

	Description
Decision-making options within current legal framework (see chapter 3.1)	Policy options that would be possible within current legal framework but are not used in practice by Member States
Decision-making options with treaty change but within existing transgovernmental policy-mode (see chapter 3.2)	Policy options that keep the central role of EU Member States as sole decision-makers (i.e. transgovernmental policy-mode) but alter the way member states make decisions. These policy options require treaty change (ordinary revision procedure).
Decision-making options with treaty change beyond transgovernmentalism (see chapter 3.3)	Policy options that challenge the sole role of EU member states as decision-makers and consider the involvement of other institutional actors and even a 'communitarisation light'.

The second category lists decision-making options that keep the transgovernmental nature of the CFSP (i.e. member states as key decision-makers) but require treaty change (ordinary revision procedure), as they alter the way member states come to decisions (see chapter 3.2 and Table 7) The third category of policy options goes beyond transgovernmentalism and questions the sole role of member states as decision-makers in the CFSP, in that it takes a broader perspective on alternative policy-modes that involve other institutional actors. These policy modes not only alter the decision-making but the overall policy-making mode of the CFSP (see chapter 3.3 and Table 7).

Flexibility refers here to two dimensions of decision-making: one the one hand one changes the way decisions are considered taken (i.e. instead of consensus a certain amount of support is considered sufficient to adopt an EU decision in the CFSP), on the other hand flexibility refers to the binding

<sup>38</sup> European Parliament Think Tank (2021a). [Qualified Majority Voting in Foreign and Security Policy](#): Pros and Cons.

<sup>39</sup> Bendiek, A. & Kempin, R. (2018). [Qualified Majority Voting and Flexible Integration for a More Effective CFSP?](#) A Critical Examination of the EU's Options. SWP Comment No.25, June 2018. König, N. (2022). [Towards QMV in EU Foreign Policy](#). Policy Brief Jacques Delors Center, Hertie School of Governance. Mintel, J. & von Ondarza, N. (2022). [More EU Decisions by Qualified Majority Voting – but How?](#) SWP Comment No. 61, October 2022.

effect of the adopted decision for all EU members or only those that agreed to the decision. The latter case goes into the direction of differentiated integration, where opinions differ if it is helpful or harmful for more general integration. On the positive side, differentiated integration could be a motor for more integration if others see the benefit of working more closely in a particular area. On the negative side, observers fear the risk that it would unravel the integration process, if parts of the EU move with different speeds<sup>40</sup>.

In the realm of EU legislative policy-making, some sort of flexibility has always been present through the different legal instruments of regulations, directives and decisions. Only regulations and directives are binding for all member states, and while the former are directly applicable, directives give a certain degree of flexibility to member states as to the national means to achieve the agreed policy goal. However, as legislative acts are excluded in the CFSP, this differentiation has not had an effect in the realm of foreign policy.

When considering policy options to introduce more flexibility into the CFSP it needs to be kept in mind that the CFSP in comparison to other policy areas has always been 'more political' and part of '**high politics**'. Stanley Hofmann, one of the scholars thinking about European integration in the mid 20<sup>th</sup> century, had suggested that states are going to be only willing to delegate power in areas of 'low politics' such as economic cooperation, but that they are not going to agree to give up any sovereignty in areas of 'high politics'<sup>41</sup>. While the differentiation between low and high politics is nowadays difficult to discern, it is still the case that due to the less institutionalised framework of the CFSP the **political interaction between member states is key** in understanding negotiation dynamics. In addition, scholars in the past five years also showcased an additional politicisation of EU external relations and EU foreign policy debates<sup>42</sup>.

Furthermore, the main peculiarity of EU foreign policy in comparison to other foreign policy actors needs to be kept in mind: EU foreign policy represents a complex and hybrid system of foreign policy cooperation rather than a unitary foreign policy actor<sup>43</sup>, where the **collective EU foreign policy is conducted in parallel to the national foreign policies** of the EU member states. This is what makes EU foreign policy actorness distinct from other international actors<sup>44</sup>.

The Treaty on the European Union provides therefore also **specific provisions** that are meant to bind member states' foreign policy to the collectively taken EU decisions. Art. 28(2) TEU suggests that Council decisions on EU actions in regard of international situations 'shall commit the Member states in the positions they adopt and in the conduct of their activities', and it further obliges them to inform the Council about any national positions or actions they might take in this regard. Art. 29 TEU reconfirms this commitment in that 'Member States shall ensure that their national policies conform to the Union positions'. Furthermore, Art. 32 suggests that 'before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council.'

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<sup>40</sup> Kröger, S. & Loughran, T. (2022). [The Risks and Benefits of Differentiated Integration in the European Union as Perceived by Academic Experts](#). *Journal of Common Market Studies* 60(3), pp. 702–20.

<sup>41</sup> Hoffmann referenced in Kuhn, T. (2019). [Grand theories of European integration revisited: does identity politics shape the course of European integration?](#) *Journal of European Public Policy* 26(8), pp. 1213–30.

<sup>42</sup> Barbé, E. & Morillas, P. (2019). [The EU global strategy: the dynamics of a more politicized and politically integrated foreign policy](#). *Cambridge Review of International Affairs* 32, pp. 753–770. Biedenkopf, K., Costa, O. & Góra, M. (2021). [Introduction: shades of contestation and politicisation of CFSP](#). *ibid*; Maurer, H. & Wright N. (2021a). [How much unity do you need?](#) *ibid*.

<sup>43</sup> Smith, M. (2012). [Still Rooted in Maastricht: EU External Relations as a 'Third-generation Hybrid'](#). *ibid*; Smith, M. (2018). [Does the Flag Still Follow Trade?](#) *ibid*; Maurer, H. & Wright N. (2021a). *ibid*.

<sup>44</sup> Orenstein, M. & Kelemen, D. (2017). [Trojan Horses in EU Foreign Policy](#). *ibid*.

These provisions are meant to ensure a close coordination between the position-taking and implementation activities at national levels with the collective decisions taken in Brussels. Especially the latter is key, as EU decisions at best are not only to be implemented through EU means (i.e. through the HR/VP and the EEAS) but have an even bigger effect if also implemented through the national means of the EU member states<sup>45</sup>.

These **treaty provisions establish political commitments**, which remain outside of the jurisdiction of the European Court of Justice, they can only be enforced politically through the collective of EU member states. Their political character also means that they leave ample room for interpretation about when a member state sufficiently or insufficiently supported a collectively taken EU decision or when national action sits outside the scope of collectively decided boundaries. Furthermore, member states still pursue their national foreign policies also through other fora, and there are also areas where the EU is not considered the main preferred venue for cooperation.

Next to these specific provisions for the CFSP, the Treaty on the European Union emphasises the principle of '**sincere cooperation**'<sup>46</sup> in Art. 4(3) TEU. This principle is not very prominent in CFSP discussions, but it is of course part of the overall EU acquis and therefore also applies to the CFSP. In this regard it is interesting to note that EP Committee on Economic and Monetary Affairs in its opinion from March 2023 'reminds the Member States that unanimity as it appears in the Treaties must be counterbalanced by a high level of responsibility and must be in line with the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union'<sup>47</sup>.

EU decisions are necessary to determine any position of the EU on international issues, a feature which is due to the legal nature of the EU as a foreign policy actor, and which is different in other political systems like e.g. the federal system of the United States. At the same time, the CFSP is a special form of transnational multilateralism: no other international or regional organization offers such a degree of foreign policy coordination or shows a comparable ambition to do so.<sup>48</sup> The **EU has a formal position on a specific issue or event, only if member states in the Council agreed to this EU position**. This also implies that the HR/VP or the EU ambassadors in the EU delegations can only represent an EU position, once it has been adopted by the Foreign Affairs Council. For any of these EU positions a decision-making process is necessary, where member states agree either informally by consensus or formally by unanimity. EU actions within the framework of the CFSP are thus not possible without all member states having agreed. An illustration for this is the distinct wording in press releases, where there is a clear distinction between a 'Statement delivered by the High Representative on behalf of the European Union' (then all member states agreed), on behalf of selected EU member states (which lists the member states that agreed) or if the statement is by the HR/VP only (where the HR/VP issues a statement without the formal consent of member states). This said, it is always possible that member states align their foreign policy actions bilaterally and push a certain foreign policy direction without a formal EU decision. They then implement together, but it means that the formal EU representatives cannot support the same position without a consent of all EU member states.

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<sup>45</sup> Maurer, H. & Wright N. (2021a). *ibid.*

<sup>46</sup> Art. 4(3) TEU reads „3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties'.

<sup>47</sup> European Parliament Committee on Economic and Monetary Affairs (2023). [Opinion on the implementation of passerelle clauses in the EU Treaties](#) of the Committee on Economic and Monetary Affairs for the Committee on Constitutional Affairs (2022/2142(INI)).

<sup>48</sup> Maurer, H., Whitman, R. & Wright, N. (2023). [The EU and the invasion of Ukraine: a collective responsibility to act?](#) *International Affairs* 99(1), p 225.

### 3.1. Decision-making options within the current legal framework

Since the incorporation of the CFSP with the Treaty of Maastricht, its decision-making mode has not been modified. All member states need to agree, with the possibility of constructive abstentions. Flexibility has been possible in the CFSP in the way that member states – next to the EU and its institutions, in particular the EEAS and the HR/VP – can decide for themselves on how to support and implement EU decisions within their national foreign policies.

Table 5 lists the possible decision-making options currently possible within the current CFSP framework, which we will now turn to discuss in more detail.<sup>49</sup>

Table 5: List of existing decision-making options within CFSP

	Description
<b>Unanimity</b> Art. 31(1) TEU	Default formal decision-making mode in CFSP; Gives veto-power to each EU member state
<b>Constructive Abstention</b> Art. 31(1) second subparagraph TEU	Since Treaty of Amsterdam: EU decision does not apply to member state abstaining, but the latter must not take action that goes against EU action.
<b>QMV as follow-up to unanimous strategic decisions</b> Art. 31(2) TEU	According to the treaty, the 'Council shall use QMV', when following up on strategic decision by European Council; Hardly used in practice.
<b>'Luxembourg Compromise' as 'Brake Clause'</b> Art. 31(2) second subparagraph TEU	This old compromise from the 1960s allows the Member State concerned, based on Article 31(2) TEU, to oppose the adoption of a CFSP decision to be taken by QMV if that act would go against its 'vital and stated' national interests.
<b>Differentiated Integration</b> Art. 20 TEU, Art. 42(6) TEU, Art. 46(6) TEU	Enhanced cooperation (CFSP) Permanent structured cooperation (CSDP) Informal differentiated integration through regional groupings, contact and lead groups, flexible cooperation within international settings
<b>Progressive Activation of Passerelle Clause</b> Art. 48(7) and Art. 31(3) TEU	European Council decides by unanimity for use of QMV in Council

The standard decision-making mode within the CFSP since its very inception is **unanimity** in the Council or the European Council (Art. 31(1) TEU). Formally all CFSP decisions need to be formally adopted by the Council, although most agreements are already reached at lower levels in the Council, i.e. in particular on the level of the Political and Security Committee<sup>50</sup> or on Council working group level. Also within the CFSP the consensus seeking nature of EU negotiations implies that in most CFSP negotiations the member states' representatives seek for a consensus and voting is only

<sup>49</sup> The study does not consider treaties out of the Community method or possible opt-out scenarios, as they seem too far off from current political possibilities for CFSP reform. For a wider discussion on flexibility options as offered by the Lisbon Treaty see Montero, C. (2015). [Flexibility Mechanisms in the Lisbon Treaty](#). Study commissioned by the policy department for Citizen's Rights and Constitutional Affairs at the request of the European Parliament AFCO Committee.

<sup>50</sup> Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) Member States and the Political and Security Committee in the Post-Lisbon EU Foreign Policy Architecture. *Journal of Common Market Studies* 59(4), pp. 856–72.



used at rare occasions. The main criticism of unanimity as formal decision-making mode is that it allows single member states to veto EU action, as for example Germany has blocked a possible EU involvement to establish a no-fly zone over Libya in 2011<sup>51</sup>. The non-exhaustive list of vetoes showcased by Wessel and Szep<sup>52</sup> indicates that in the last years especially Hungary extensively used the (threat of the) veto in the CFSP. Pomorska and Juncos explain<sup>53</sup> that politicisation and increasing contestation of the past few years also impacted the working culture in the Council working groups, although the adherence to **procedural norms** (i.e. justifying your position taken during negotiations) have been considerably stable. It is especially the **lack of justification for the positions** of Hungary that many policy-observers point out as the current problem in regard of the CFSP decision-making process, which is a novel phenomenon and had not been present in CFSP negotiations beforehand. Another criticism that is often put forward in terms of negotiation dynamics is that in settings where a veto is possible, member states are prone to adopt a more vigorous and competitive negotiation strategy, as they know that they cannot be outvoted so easily by the others<sup>54</sup>. This means that right from the start they are less likely to consider alternative positions and have less willingness to show flexibility in their own positioning. It is therefore likely that the 'shadow of the veto' makes member states adopt a more aggressive negotiation strategy, alters negotiations dynamics and takes more time.

Already in the Treaty of Amsterdam EU member states recognised the challenge of using unanimity in the CFSP by introducing the possibility of **constructive abstention**. Article 31(1) TEU that states unanimity for all CFSP decisions also provides since then the possibility that 'when abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union'. In the past 25 years this possibility of constructive abstention has, however, hardly been used. Cyprus constructively abstained in 2008 from the decision to establish the CSDP mission EULEX Kosovo<sup>55</sup>, and in 2021 Austria, Ireland and Malta constructively abstained from the Assistance Measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force<sup>56</sup>. All three countries though agreed to support the assistance measure under the European Peace Facility to support the Ukrainian Armed Forces through civilian means<sup>57</sup>. Hungary used the possibility of constructive abstention in November 2022 about the Council decision launching the European Union Military Assistance Mission in support of Ukraine (EUMAM Ukraine)<sup>58</sup>. The increased use of constructive abstention by member states could be a way forward to achieve more flexibility

<sup>51</sup> The Guardian (2011). Germany blocks plans for Libya no-fly zone. 15 March 2011. Accessible at: <https://www.theguardian.com/world/2011/mar/15/germany-blocks-libya-no-fly-zone>

<sup>52</sup> Wessel, R. & Szép, V. (2022). [The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting](#). *ibid.*, p. 64.

<sup>53</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), *ibid.*

<sup>54</sup> For more details about accommodating versus competitive negotiation strategies see Pruitt, D. (2002). Strategy in Negotiation. In Kremeniuk, V (ed.). International negotiation: analysis, approaches, issues. (pp. 85-96). Jossey-Bass.

<sup>55</sup> Grevi, G., Zeiss, M. Morillas, P. & Soler i Lecha, E. (2020). [Differentiated Cooperation in European Foreign Policy: The Challenge of Coherence](#), *ibid.*, p. 7.

<sup>56</sup> Council (2022a). [Council Decision \(CFSP\) 2022/1285](#) of 21 July 2022 amending Decision (CFSP) 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force. The declarations of Austria, Ireland and Malta notifying the Council can be found here: <https://data.consilium.europa.eu/doc/document/ST-7282-2022-INIT/en/pdf>

<sup>57</sup> Council (2022b). [Council Decision \(CFSP\) 2022/1284](#) of 21 July 2022 amending Decision (CFSP) 2022/339 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces.

<sup>58</sup> <https://euroefe.euractiv.es/section/european-newsroom/news/eu-military-aid-to-ukraine-training-mission-and-replenishment-of-weapons-stockpiles/>

without altering the existing decision-making modes in the CFSP, but the downside is that most member states need to be actively convinced to constructively abstain instead of using their veto, which again puts a lot of time and effort on the negotiation parties.

A derogation from the unanimity rule and the use of **qualified majority** would also be envisaged by the TEU according to Art. 31(2), when following circumstances arise:

'the Council shall act by qualified majority

- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),
- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,
- when adopting any decision implementing a decision defining a Union action or position,
- when appointing a special representative in accordance with Article 33.'

The European Commission reiterated in their 2018 Communication 'A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy' that any of the first two cases '**enables** the use of qualified majority voting', while any of the last two cases '**requires** the use of qualified majority voting'<sup>59</sup>. While the last cases are used in practice, the first two cases have not been applied so far within the realm of the CFSP. This is also because it is up for **(political) interpretation when a decision of the European Council about the Union's strategic interests and objectives exists**. Can such a strategic interest only be determined in a formal 'strategy document' or would it suffice for the European Council to declare its decision in generic European Council conclusions? For the EU to use the flexibility offered by Art. 31(2) TEU more often, it would need a political commitment by the European Council to provide more opportunities for QMV in the Council. It has been one of the four proposals by the European Commission in their 2018 communication on a stronger global actor to exploit 'the potential of existing qualified majority voting provisions under Article 31(2) TEU'<sup>60</sup> by suggesting that 'the Council consistently uses qualified majority voting for amending the listings of all EU sanctions regimes' and that 'the European Council adopts decisions setting out thematic or geographical strategies, priorities or guidelines (...) and which the Council can act by qualified majority voting to implement them'.

How open for interpretation the use of QMV under Art. 31(2) is and how reluctant member states are in considering this option, showed when HR/VP Josep Borrell in November 2020 proposed to adopt the EU Action Plan on Human Rights and Democracy 2020-2024 in a way that would also include the use of QMV for any implementing decisions to follow<sup>61</sup>. While member states adopted the Action Plan, 'moving to QMV has not yet been agreed by the Member States'<sup>62</sup> because most member states reject the move to QMV out of principle<sup>63</sup>.

In regard of the possible use of QMV it is also necessary to consider the political tool of the **Luxembourg Compromise** as brake clause and remedy to an increased use of QMV in the CFSP. This old compromise from 1966 allows Member State concerned, based on Article 31(2) TEU, to oppose the adoption of a CFSP decision to be taken by QMV if that act would go against its 'vital and stated'

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<sup>59</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, p. 9.

<sup>60</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, p. 11.

<sup>61</sup> EU Debates (2021). Disagreement in EU Council on use of qualified majority voting in implementation of EU Action Plan. YouTube Video: <https://www.youtube.com/watch?v=NVzVh7pZtdY>.

<sup>62</sup> European Parliament Think Tank (2021a). [Qualified Majority Voting in Foreign and Security Policy](#), *ibid.*, p. 7.

<sup>63</sup> As confirmed in two anonymous interviews, April 2023.

national interests<sup>64</sup>. Here again the respect of established procedural rules is key for the success of a member state to convince others that its 'vital and stated' national interest is at stake. It is similar to brake clauses used in other policy areas nowadays, such as for the coordination of social security systems (Art. 48 TFEU), for judicial cooperation in criminal matters (Art. 82 TFEU) or the establishment for common rules for certain criminal matters (Art. 83 TFEU). While the Luxembourg compromise has been used time and again, there were also cases where member states rejected that a vital national interest is at stake and adopted the decision, because the respective member state could not provide convincing argumentation.<sup>65</sup> This shows that the Luxembourg compromise is a political instrument but not a legal remedy against QMV. It is a legal possibility in the treaty, but if the claim of a national interest is accepted is a political process that depends on the acceptance of the member states.

While constructive abstention is considered one form for more flexible decision-making, the other side of the same coin is the possibility of **enhanced cooperation**. Since the Treaty of Lisbon, Article 20 TEU allows the use of enhanced cooperation also in the realm of the CFSP, while in the framework of the CSDP it is '**permanent structured cooperation**' (Art. 42(6) and Art. 46 TEU). Permanent structure cooperation can be established by a group of countries, after the Council agreed to it by QMV after consulting the HR/VP (Art. 46 TEU). The most prominent example of the past years is the establishment of the permanent structured cooperation on defence (PESCO), where 25 EU member states joined and only Denmark and Malta decided not to join.

Next to this formal possibility of enhanced or permanent structured cooperation in the CFSP or CSDP, member states have of course also the possibility to cooperate outside of the formal EU framework on a political level. Grevi et al. even suggest that 'differentiated integration is the norm in European foreign policy'<sup>66</sup>. Constructive abstention and enhanced cooperation 'enable groups of member states to work together beyond the stifling constraints of unanimous decision-making'<sup>67</sup>. However, these formal mechanisms have hardly been used because they are considered too unpractical and because in the end negotiations seem to continue until most member states join anyway. 'Beyond the treaties, however, EU member states have experimented with a range of mostly informal differentiated cooperation formats. These include regional groupings, contact and lead groups, flexible cooperation within international bodies and the option of the High Representative tasking national foreign ministers to act on behalf of the EU'<sup>68</sup> The latter showcases again the political nature of the CFSP, where the institutional framework can support cooperation between all member states, but political initiatives might also enable ad-hoc mini-groupings, where member states can choose to situate a decision within the more cumbersome EU framework where they need to convince everyone or instead within a group of willing member states that agree to cooperate politically inside and outside the EU to pursue a certain, jointly agreed objective.

The last existing option within the CFSP framework to allow for more flexibility are the in the EU treaties existing **passerelle clauses**. Böttner explains that 'these clauses are a sort of simplified

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<sup>64</sup> Article 31(2) reads as follows: „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'.

<sup>65</sup> Nuttall, S. (1992). [European Political Co-operation](#). Oxford University Press.

<sup>66</sup> Grevi, G., et al. (2020). [Differentiated Cooperation in European Foreign Policy](#): The Challenge of Coherence. EU IDEA Policy Paper No. 5, European Policy Center.

<sup>67</sup> Grevi, G., et al. (2020). [Differentiated Cooperation in European Foreign Policy](#). *ibid*, p. 3.

<sup>68</sup> Grevi, G., et al. (2020). [Differentiated Cooperation in European Foreign Policy](#). *ibid*, p. 3.

treaty revision<sup>69</sup> and lists in which areas passarelle clauses could be applied. A recent study by Kotanidis for the European Parliament Research Service<sup>70</sup> highlights that a **general passerelle clause** is a mechanism currently included in Art. 48(7) TEU that would allow the move from unanimity to QMV in the CFSP, with the exceptions for areas with military implications or defence: 'Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case'. In the activation process of this general passerelle clause the European Parliament needs to consent. National parliaments need to be notified about the intention of the European Council to adapt this passerelle clause, and they have six months to veto such a decision. Mintel and von Ondarza also point out that national parliamentary 'requirements are similar to those for treaty amendments'<sup>71</sup>, with many member states needing the approval of both parliamentary chambers. As Kotanidis points out, it is key to remember that the passerelle clause in CFSP only concerns the move in decision-making mode from unanimity to QMV in the Council, but it does not touch any other policy-making implications (like e.g. the role of the EP).

Next to this general passerelle clause, **Art. 31(3) TEU** provides a **special passerelle clause** for the CFSP: 'The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2'. Kotanidis in her study on passerelle clauses notes that an ongoing 'point of contention is the relationship between this special (CFSP) passerelle with the general passerelle of Article 48(7) TEU'<sup>72</sup> and that also legal scholars disagree which one takes prevalence. The main differences are that the activation of the special passerelle clause does not envisage any European or national parliamentary involvement and that the special passerelle clause does not give national parliaments the possibility of veto.

The catch for both the general or the special passerelle clause is that although they have different requirements at national level, the **decision to trigger this passerelle clause needs to be taken by the European Council by unanimity** (and thus a formal vote and not just consensus)<sup>73</sup>. While some member states are sympathetic to the idea of authorising the use of QMV, some member states on principle seem to reject the idea of giving away this power to veto on a general level<sup>74</sup>. The European Parliament in its February 2017 resolution therefore also noted that 'none of the 'passerelle clauses' provided for in the Lisbon Treaty with a view to streamlining the EU's governance have been deployed and are unlikely to be so in the present circumstances'<sup>75</sup>.

The European Commission in its 2018 Communication on a stronger global actor recommended three specific areas that would benefit from the application of passarelle clause according to Art. 31(3): EU positions on human rights in multilateral fora; the adoption and amendment of EU sanction regimes, and civilian CSDP missions.<sup>76</sup> In a similar vein, the European Parliament AFCO

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<sup>69</sup> Böttner, R. (2022). [Special legislative procedures in the Treaties](#). *ibid.* pp. 59-60.

<sup>70</sup> Kotanidis, S. (2020). [Passerelle Clauses in the EU Treaties Opportunities for more flexible supranational decision-making](#). European Parliament Research Service Study PE 659.420.

<sup>71</sup> Mintel, J. & von Ondarza, N. (2022). [More EU Decisions by Qualified Majority Voting – but How?](#) *ibid.*

<sup>72</sup> Kotanidis, S. (2020). [Passerelle Clauses in the EU Treaties Opportunities](#), *ibid.*, p. 20.

<sup>73</sup> Kotanidis, S. (2020). [Passerelle Clauses in the EU Treaties Opportunities](#), *ibid.*, p. 21.

<sup>74</sup> König, N. (2022). [Towards QMV in EU Foreign Policy](#). *ibid.*

<sup>75</sup> European Parliament (2017). [European Parliament Resolution of 16 February 2017](#) on Possible Evolutions of and Adjustments to the Current Institutional Set-up of the European Union (2014/2248(INI)), point AA.

<sup>76</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, p. 11-12.

committee issued a draft report in February 2023<sup>77</sup> on the implementation of the *passerelle* clauses in the EU that suggests the gradual activation of several *passerelle* clauses. It suggests that *passerelle* clauses 'could be a useful tool to move towards QMV' when adopting restrictive measures, including under the EU Global Human Rights Sanctions Regime, when adopting statements or decisions on international human rights issues, and when deciding on civilian CSDP missions. Until the end of 2024 they nudge the European Council to use Art. 31(3) TEU to move to QMV for positions on human rights in multilateral forums (Art. 21 TEU), international agreements in the CFSP (Art. 37 TEU) and CSDP civilian missions (Art. 42(4) and 43 TEU). As long-term priority (within the next legislative term 2024-2029) they propose the use to QMV for all areas of CFSP, except for those with military implications.

As this overview showcases the formal decision-making mode within the CFSP is unanimity, but there are also ample opportunities for more flexible decision-making. However, those either remain political instruments or they have not been used. With many member states in the Council still unsure about the move to QMV in the CFSP, it is politically unlikely that the European Council is going to offer the opportunity of a *passerelle* clause. The main possibilities those remain through the (increased) use of constructive abstention and the exploration of enhanced cooperation formats.

### 3.2. Decision-making options with treaty change but within transgovernmental policy-mode

The previous chapter discussed the existing decision-making modes within the CFSP that are possible according to the current treaty provisions, but which are not used (often enough) in political reality. In this chapter we are going to consider alternative decision-making modes that would alter the way member states make decisions within the existing policy-making mode of the CFSP, i.e. within the current transgovernmental framework of the CFSP. No other feature of this policy-mode is adjusted here, i.e. we remain with member states in the Council being the main decision-makers, supported by the HR/VP and the EEAS.

All the options discussed here would be a departure from existing decision-making rules and would therefore require treaty change. However, we only change the way member states make decisions, and do not consider (yet) the involvement of other actors. The key question here indeed then is, **when an 'EU decision' is considered to exist**. Until now the underlying consensus of using unanimity in most CFSP decisions is that each member state needs to agree, and it needs to agree time and again, apart from the cases where it is clearly established that the decision is about an operational decision to implement a strategic decision previously agreed by unanimity. Only in chapter 3.3 we are going to look beyond transgovernmentalism and consider policy options that would alter the institutional involvement in making CFSP decisions.

The following Table 6 lists decision-making options that would provide more flexibility to what exists so far in the TEU, but most importantly it keeps the member states as the main decision-makers. The flexibility emerges by pushing indeed the boundaries on how much disagreement is acceptable, to still reach an EU decision. The question is thus about pooling in collective decision-making bodies, which 'reflects the tension between protecting or surrendering the national veto'<sup>78</sup>, whereas in following chapter 3.3 we are going to consider an increase in delegation.

<sup>77</sup> AFCO is still working on this resolution. See European Parliament Committee on Constitutional Affairs (2023). [Draft report on the implementation of the passerelle clauses in the EU Treaties](#) (2022/2142(INI)), awaiting committee vote.

<sup>78</sup> Hooghe, L. & Marks, G. (2015). [Delegation and Pooling in International Organizations](#). *The Review of International Organizations* 10(3), pp. 305–28.

Table 6: Decision-making options within current transgovernmental CFSP mode

	Description
<b>Adjusted constructive abstention</b>	Adjust the procedure for constructive abstention by which a XYZ % of member states can request/oblige member state to use constructive abstention.
<b>Reinforced enhanced cooperation</b>	Member states not participating in enhanced cooperation do not have to implement nationally, but EU is going to fully implement enhanced cooperation objective, including budgetary and legal implications, if more than 2/3 of member states joined enhanced cooperation
<b>QMV</b> in selected CFSP areas	Approval of 55% of Member States (16 MS) or 72% if the act has not been proposed by the Commission/HR/VP (20 MS), which must represent at least 65% of the EU's population. All member states and EU need to implement. Emergency brake of Art. 31 (2) is extended to all areas where QMV is used. e.g. EP proposal to amend TEU: use QMV for sanctions
<b>Enhanced QMV</b> in selected CFSP areas	Approval of 89% of member states (24 out of 27), which represent at least XYZ% of EU population, plus HR/VP consent.
<b>Super-QMV:</b> Adjusted, strict QMV	Approval of 96% of member states (26 out of 27), which represent at least XX% of EU population, plus HR/VP consent.
<b>QMV to activate passerelle clause</b> Art. 48(7) TEU	EP proposal to amend TEU: EUCO to decide by QMV on the activation of a passerelle whereby Council decides by QMV
<b>Flexible opt-in / opt-out system</b>	An extreme form of letting MS decide to be in or out of any policy decision (proposal by Prof. Vivian Schmidt) to overcome unanimity constraint
<b>Reverse decision-making</b>	EU decision proposed by HR/VP/Commission are deemed adopted if member states do not proactively reach a certain % of votes in Council.

A first option to introduce more flexibility by relying on an existing instrument would be the use of an **adjusted constructive abstention**. The idea would be to give member states a tool to request a vetoing member state to use constructive abstention, if they are not convinced by the justification and reasoning given by the member state that goes in the direction of a justified, national veto. Such a mechanism would make strategic vetos that are not related to the issue at hand impossible, which the European Commission identified as one of the major obstacles to CFSP decision-making in their 2018 Communication<sup>79</sup>. Such an instrument could be a way to overcome the blockage of CFSP decisions for reasons beyond the scope of the CFSP (i.e. if a member state puts forward a veto for

<sup>79</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, pp. 5-6.

gaining party support at home or for fostering its internal political position or for gaining concessions in another unrelated dossier).

The existing rules for constructive abstention, for example, could be adjusted in a way that a certain percentage of member states (e.g. if 2/3 of remaining MS agree and the move is supported by the HR/VP) can 'override' a member state that threatens a veto and does not provide a convincing reason and force the member into the use of constructive abstention. Given the existing negotiation dynamics in the Council and its consensus-seeking attitude, it is likely that member states are not going to be too forceful in pressing a vetoing member state into this situation, if there is a good cause for caution and the procedural norms of justifying and explaining one's position<sup>80</sup> have been respected. The assessment if a cause for veto is justified, remains of course a highly political process, which is difficult – if not impossible – to put into clear legal requirements. It would need to be practically decided by member states, how such a convincing justification would have to look like, if justifications would need to formally be submitted or if it would suffice to communicate them orally in negotiation meetings, as is the case now.

The latter constraint is the main reason to suggest a **reinforced enhanced cooperation** for the CFSP, which would indeed be a new way of EU policy-making. The process to establish enhanced cooperation could remain the same (i.e. all member states need to agree that enhanced cooperation format can be established), but with the effect of altering the implementation of enhanced cooperation. In the current set-up of enhanced cooperation only those member states need to implement that are part of the cooperation framework, with no EU implementation. In such a reinforced enhanced cooperation format, those member states outside of enhanced cooperation do not have to implement nationally, but the EU is going to fully implement the enhanced cooperation objective with its budgetary and legal implications, if a certain amount of member states joined the enhanced cooperation (e.g. more than 2/3, so 19 out of 27 member states). The demand for implementation the decision would thus be the same as for constructive abstention: those that do not agree to the decision do not need to implement, but they do not block implementation through the EU and through those member states that aim to go ahead. The main difference between reinforced enhanced cooperation and adjusted constructive abstention lies in the process to get to a decision: whereas reinforced enhanced cooperation focuses on those member states that want to move ahead, adjusted constructive abstention puts the emphasis on those member states that do not want to be part of the suggested policy. Such a policy option of reinforced enhanced cooperation has not been used so far, but it would ensure that the EU also through its institutional actors can still promote, represent and pursue certain policies, even if not all member states joined the policy initiative. The non-participating member states would not implement through their national means, but they would not block the EU from being more proactive and quicker in its reactions to international demands, if two thirds of member states opted for such reinforced enhanced cooperation.

A general move from unanimity to **QMV in selected areas of CFSP** would have a similar effect than the reinforced enhanced cooperation. Not all member states would support the decision, but the main difference would be that also those not supporting the decision would still need to implement it. Due to the political nature of foreign policy, it is unlikely that unsupportive member states would proactively promote the decision. But this flexibility is already present now, where we see some member states more actively using their national means to promote EU decisions, whereas others do hardly anything. It is very clear from the discussions that any areas with military or defence implications would remain firmly under unanimity, but there have been various suggestions

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<sup>80</sup> For procedural norms discussion see Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), *ibid.*

especially from the European Commission and the EP to move the decisions for sanctions, for civilian missions or for human rights issues under QMV<sup>81</sup>. The EP resolution from June 2022, for example, suggested to change Art. 29 TEU in a way that QMV would be used for decisions on financial or economic restrictive measures<sup>82</sup>.

Qualified Majority in the EU is generally reached (Art. 16(4) TEU) when 55% of member states (thus 16 member states) - or 72% of member states (thus 20 member states) if the proposal is not coming from the Commission or the HR/VP – agree and if they represent at least 65% of the EU’s population ((238(2) TFEU). A blocking minority must include at least four Council members. However, within the European integration framework the **move from unanimity to QMV has always gone hand in hand with a move for more EP involvement in the past**. When QMV was extended to new policy areas, these policy areas also simultaneously moved from consultation procedure to co-decision, which is now the ordinary legislative procedure. The underlying rationale was that the democratic legitimacy for EU decisions is then not only safeguarded through the representation of national interests in the Council but also through the representation of citizens’ interests in the European Parliament. Citizens from countries outvoted in the Council could then still hold their MEPs accountable for policies that they might disagree with. Even nowadays, QMV in the Council outside of the OLP is only used in emergencies (see above in chapter 2.1)

For the CFSP, there might therefore be good reasons to adjust the way QMV is calculated towards the use of an **Enhanced QMV** in selected CFSP areas or even a **Super-QMV**. As a reminder Art. 238 TFEU already proposes an alternative QMV calculation with at least 72% of members representing 65% of the population if the proposal is not coming from the Commission or the HR/VP. This idea could be further adapted to the CFSP. Member states would need to decide collectively what kind of thresholds they would feel comfortable with, but an adjusted QMV could, for example, include the approval of 89% of member states (24 out of 27), which must represent at least a certain % of the total EU population and where the decision must be supported by the HR/VP. A Super-Majority QMV could refer to the approval of 96% of member states (26 out of 27), which must represent at least a certain % of the total EU population and where the decision must be supported by the HR/VP. The idea here would be that member states see the merit of introducing more flexibility, while also not having to fear that whole groups of member states might be outvoted in the future. Also, the argument could be made that also nowadays the use of QMV voting is hardly common in the Council, even in areas where it would be possible due to the consensus-seeking nature of EU negotiations. It would simply be an instrument to nudge member states towards a bit more flexibility by reducing the ability of the 'threat of the veto'.

A mechanism to mitigate the effects of the introduction of QMV in CFSP would be to **extend the existing emergency brake** for the CFSP of Art. 31(2) (the 'Luxembourg Compromise') to all areas where QMV is applied. Mintel and von Ondarza<sup>83</sup> suggest even an alternative form of emergency brake that could allow a member state to halt the Council discussions and to move the deliberation to the European Council if a serious threat to national foreign policy can be expected. They take inspiration from Art 82(2) and 83 TFEU<sup>84</sup> which suggests a similar emergency brake for criminal

<sup>81</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*

<sup>82</sup> European Parliament (2022). [European Parliament Resolution of 9 June 2022](#), *ibid.*

<sup>83</sup> Mintel, J. & von Ondarza, N. (2022). [More EU Decisions by Qualified Majority Voting – but How?](#) *ibid.*

<sup>84</sup> Art. 82(2) reads „Where a member of the Council considers that a draft directive (..) would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European



justice matters. In his review of the emergency brake in criminal justice matters Öberg<sup>85</sup> though finds that also here most decisions are decided by consensus rather than by QMV, and to date the emergency brake has not been used at all.

The currently most concretely proposed alternative policy option within this category of adjusting the voting between member states but staying within the transgovernmental decision-making mode is the **proposal to move from unanimity to QMV** (as specified in (Art. 16(4) TEU) **to trigger passerelle clauses**.

In its resolution of June 2022<sup>86</sup> to revise the treaties as a follow up of the Conference on the Future of Europe the European Parliament proposes to modify Article 48(7) about the activation of a passerelle clause in a way that the European Council decides by QMV instead of unanimity about the use of QMV in the Council: 'the European Council shall act by a qualified majority as defined in Article 238(3), point (b), of the Treaty on the Functioning of the European Union after obtaining the consent of the European Parliament, which shall be given by a majority of its component members'. This means that if Parliament's proposal for this treaty revision would be adopted the European Council could activate a passerelle clause by QMV (72% of members representing at least 65% of population) instead of by unanimity. The main argument for the use of the general passerelle clause is that it offers 'an opportunity precisely to take a small, yet important, step in that direction'<sup>87</sup> that the Conference on the Future of Europe had asked for.

There are also two more extreme options that one can consider introducing flexibility in the way member states make decisions in the CFSP. First, Schmidt introduced her idea of an **end to the unanimity rule**, in that she suggests substituting vetos with a **more flexible opt-in/opt-out system**: 'Member States could reach agreement on the big policy issues to pursue by allowing the occasional negotiated opt-outs for those members with legitimate reservations about participation in a given area'<sup>88</sup>. According to Schmidt, an end to the unanimity rule would mean a more honest acceptance of differentiated integration in the EU, and it would mean to bring politics back to the democratic venues in the member states, the national parliaments, because that is then where national leaders would need to explain why they opted-in or opted-out from a certain EU decision. Her proposal gained quite some political push-back in that critiques suggested that such a flexible form of differentiation would endanger the state of European integration. For its application to the realm of foreign policy we might also need to consider that EU foreign policy issues – despite their salience – do not feature highly on the national discourse in member states, and it is unlikely that political decision-makers of member states would find there the necessary contestation or approval of their decisions taken in Brussels.

Another proposal on the more extreme side is the notion of '**reverse decision-making**' in selected policy areas. Instead of constantly having to look for support of EU decisions in the CFSP, the dynamic is turned on its head: An EU decision supported by the HR/VP/Commission is considered as adopted, if there is not a certain % of member states in the Council that oppose the decision. This changes the starting point of the political debates, but it also forces those against a certain position

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Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.'

<sup>85</sup> Öberg, J. (2021). [Exit, Voice and Consensus – A Legal and Political Analysis of the Emergency Brake in EU Criminal Policy](#). European Law Blog.

<sup>86</sup> European Parliament (2022). [European Parliament Resolution of 9 June 2022](#), *ibid.*

<sup>87</sup> European Parliament Committee on Constitutional Affairs (2023). [Draft report on the implementation of the passerelle clauses in the EU Treaties](#) (2022/2142(INI)).

<sup>88</sup> Schmidt, V. (2009). [Re-Envisioning the European Union: Identity, Democracy, Economy](#). JCMS: Journal of Common Market Studies 47(s1), pp. 17–42.

to put forward their arguments and convince others to join their opposition. It is likely that most member states are going to go along with the consensus, and that only those member states are going to invest political energy, resources and time to argue against EU decisions, if they have serious concerns.

This second set of policy options remains within the transgovernmental mode of CFSP decision-making, but it would need treaty change to alter the way member states make decisions collectively.

### 3.3. Decision-making options with treaty change beyond the current transgovernmentalism

For the following third set of altered decision-making options we go beyond accepting the existing intensive transgovernmentalism as overarching policy-mode and situate suggested changes in the wider policy cycle. (see Table 7). This means while chapter 3.2. considered altering the mode how member states make decisions, here we go a step further and offer alternative policy options that, in addition to requiring treaty change, would involve other institutional actors next to member states in making CFSP decisions.

The underlying dynamics transgress the question of pooling and consider additionally processes of delegation, which includes the 'conditional grant of authority by member states to an independent body'<sup>89</sup>. All suggested policy options would require treaty change and a fundamental reconsideration of how CFSP is decided and implemented in the EU.

Table 7: Altered policy-making modes for the CFSP: going beyond transgovernmentalism

	Description
Ordinary procedure in selected CFSP areas	QMV as main decision-making mode, embedded in wider set of institutional checks and balances; equal role for EP as co-decider with Council;
'Ordinary procedure <i>light</i> ' in selected CFSP areas	When QMV as CFSP decision-making mode, embed decision in wider set of checks and balances; stronger role for EP (e.g. consultation or consent role; or AFET confirmation);
Delegation of selected decisions to HR/VP	Certain CFSP decisions are delegated to the HR/VP to make on behalf of the EU

A longstanding debate in the evolution of EU foreign policy is the question if foreign policy must be kept apart from the Community method. The introduction of the pillar structure with the Maastricht Treaty, but also the continued separate definition of the CFSP in the TEU next to the public policies in the TFEU keep signalling this ambition that the CFSP is meant to be a 'policy apart'<sup>90</sup>.

Yet, one could argue that with the continuous development of the EU towards a political Union, with the increased politicisation of EU external relation and foreign policy and the increasing challenge of the European way on the international stage, the question if it is still useful to keep the CFSP 'apart' might want to be reopened. Instead of just introducing QMV in the Council and the possibility to overrule parts of the EU population in CFSP decisions, the question needs to be asked if it would not be more democratic and more just to introduce the **ordinary procedure** in selected areas of the CFSP. This would in terms of institutional logic follow the ordinary legislative procedure

<sup>89</sup> Hooghe, L. & Marks, G. (2015). [Delegation and Pooling in International Organizations](#). *ibid.*

<sup>90</sup> Maurer, H. & Wright N. (2022). [Foreign Policy](#). *ibid.*

from the Community method but has been renamed to indicate that there are no legislative acts adopted in the CFSP. Any use of QMV in the Council would then be embedded in a wider set of institutional checks and balances, with the EP being on equal footing with the Council in making CFSP decisions. To still keep the peculiarity of the CFSP, the adoption of legislative acts would continue to be excluded (to stay in line with Art. 31(1) TEU therefore ordinary procedure without the qualifier 'legislative') and the European Court of Justice would have no jurisdiction.

A similar option to alter the policy-making mode of the CFSP is to go into the direction of an '**Ordinary procedure light**'. In order to tackle the democratic deficit that the sole introduction of QMV in the Council would bring to CFSP decisions, one could follow the example of European integration and compensate the possible overruling of national interests through the use of QMV in the Council by a second layer of democratic accountability and control through a stronger involvement of the European Parliament. The European Parliament would be involved but not on equal footing with the Council. Thus, this involvement would not have to be full co-decision powers, but it could, for example, include a confirmation of the AFET committee of a QMV decision within a given timeframe, or the EP could be granted consultation or consent powers within a given timeframe.

Both proposals above would fundamentally alter the 'policy apart' character of the CFSP that has been kept since the Maastricht Treaty. Yet, a **communitarisation of formerly intergovernmental policy areas has not been uncommon** throughout European integration. Whereas the Maastricht Treaty, for example, assigned 'Justice and Home Affairs' (since Treaty of Amsterdam: 'Area of Freedom, Security and Justice') to an intergovernmental policy-mode, policies have been gradually moved to the Community method since the Treaty of Amsterdam. There is no argument why a similar path could not be envisaged for some areas of the CFSP. Such a move could be done gradually and first consider selected policy areas.

The third form of an altered policy-making mode for the CFSP would go down the road of **delegating decisions to selected institutional actors, like the HR/VP**. As vice-president of the European Commission, the HR/VP is accountable to the European Parliament and would thus still fulfil the demand for democratic checks and balances. Also, examples of delegation to institutional actors already exist in few cases, where the aim was to avoid politicisation between member states, e.g. when the Commission approves cross-national mergers or when the ECB sets the interest rates. One could argue in a similar manner that there might be certain CFSP decisions that should be taken out of the politicised collective arena of EU member states and made on behalf of the EU. Member states could still hold the HR/VP accountable within the Foreign Affairs Council, but the competence to make decisions in selected areas would move from member states to the HR/VP. It needs to be considered though that such a delegation to the HR/VP would also require additional resources for the HR/VP as well as for the EEAS in their supporting role for the HR/VP.

As stated above, these suggested policy options would require treaty change or an ordinary revision of the treaties and would most likely lead to a heated debate between member states about the very nature of the future CFSP.

## 4. Criteria for assessment

After the development of different policy options for more flexibility in the CFSP, this chapter develops criteria to assess the impact of the suggested policy options on the EU as foreign policy actor. This chapter describes, develops and discusses the selected assessment criteria. The seven core criteria that are developed in this part are then used in chapter 5 to assess the impact of the suggested policy options on the democratic quality of EU foreign policy-making as well as the EU actorness.

Decision-making and policy-making modes are not per se good or bad. But their use indicates a **selective prioritisation of different objectives within any political system**. It is, for example, an inherent tension of any democratic system that it needs to balance inclusive involvement and deliberation of opinions and voices on the one hand, while keeping the process effective on the other. Furthermore, any alteration in the decision-making mode shifts the prioritisation towards a different set of objectives, and most importantly it needs to follow a deliberate political choice that such a shift is desired. The literature furthermore distinguishes the benefits of individual and collective decision-making modes. While individual decision-making modes score better on speed, simplicity and clarity of responsibility, benefits of collective group decisions include increased creativity and diversity of perspectives.

For the assessment of the different decision- and policy-making modes listed above, we therefore need to consider what the relevant criteria for assessment are. These criteria are meant to determine the costs and benefits of the different policy options for the EU, its member states and its citizens. On the one hand these criteria also need to consider the **quality of the EU actorness and effectiveness** as foreign policy actor<sup>91</sup>. But because the EU is a political Union and a democratic system these criteria on the other hand also need to consider the internal, **democratic dimension of policy-making**, i.e. if decisions are made fair, transparent and in accordance with European democratic standards<sup>92</sup>.

Both the EU actorness as well as EU democracy scholarship informed the selection, delineation and definition of assessment criteria here. This chapter now presents both scholarly debates and the main criteria they highlight in turn, discusses the rationale for deducting the seven core criteria for this study, and provides clear definitions for each core criteria.

### 4.1. Criteria from EU actorness scholarship

Next to the democratic quality of EU foreign policy positions, any assessment of adding more flexibility to decision-making in the CFSP needs also to consider the **quality of the EU actorness**

<sup>91</sup> See for example Bretherton, C. & Vogler, J. (2013). [A global actor past its peak?](#) *International Relations* 27, pp. 375–390; Gehring, T., Oberthür, S. & Mühleck, M. (2013). [European Union Actorness in International Institutions: Why the EU Is Recognized as an Actor in Some International Institutions, but Not in Others](#), *Journal of Common Market Studies* 51(5), pp. 849–65. Niemann, A. & Bretherton, Ch. (2013). [EU External Policy at the Crossroads: The Challenge of Actorness and Effectiveness](#). *International Relations* 27(3), pp. 261–75.

<sup>92</sup> Schmidt, V. (2006). [Democracy in Europe: The EU and National Politics](#). Oxford University Press. Schmidt, V. (2020b). [Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone](#). Oxford University Press. Sjørnsen, H. (2018). [The legitimacy of European Union foreign policy](#). *Global Affairs* 4(2–3), pp. 253–64. Tonra, B. (2018). [Legitimacy and EU security and defence policy: the chimera of a simulacrum](#). *Global Affairs* 4(2–3), pp. 265–75. Maurer, H. & Morgenstern-Pomorski, J. (2018). [The quest for throughput legitimacy: the EEAS, EU delegations and the contested structures of European diplomacy](#). *Global Affairs* 4(2–3), pp. 305–16. Raube, K. & Tonra, B. (2018). [From internal-input to external-output: a multi-tiered understanding of legitimacy in EU foreign policy](#). *Global Affairs* 4(2–3), pp. 241–51.

**and effectiveness** as foreign policy actor. There is a long-standing scholarly debate on EU international actorhood<sup>93</sup>. Already in 2013 Niemann and Bretherton concluded that 'in fact, the EU is presently at an important crossroad. On the one hand, its external policy stature and capacity have been boosted by institutional innovations and by the Union's increased involvement in the full spectrum of international issues. On the other hand, a number of factors cast doubt on the EU's real external policy actorhood and effectiveness: slow and often only modest internal reforms, an increasing politicisation of formally 'low politics' issues and a less favourable external environment, with the United States shifting its focus to the Asia-Pacific region and emerging powers creating a more polycentric world order'<sup>94</sup>.

One of the most influential scholars working on the actorhood concept is Gunnar Sjöstedt, who suggested that in order to be considered to have actorhood, an entity needs to be 'discernible from its external environment – it has a minimal degree of separateness – and it has a minimal degree of internal cohesion. If these conditions are fulfilled, we could say that the unit has autonomy, which is...a necessary condition for the unit to be able to attain an actor capability'<sup>95</sup>. Sjöstedt suggested that three sets of conditions were necessary to achieve this quality of actorhood: 1. The ability to **articulate interests and mobilize resources**; 2. The ability to **take decisions under conditions of urgency**; and 3. The ability to **mobilize specific tools and related actors**, (see column 2 in Table 8). Key in Sjöstedt's work is that he assumed that actor capability was a necessary but not sufficient measure of the EU's external prowess<sup>96</sup>.

Several scholars between 1977 and 2010 have built on Sjöstedt's definition and further developed their concepts of actorhood. Whereas coherence, capabilities and consistency build on Sjöstedt's three conditions, scholars added a fourth condition that takes international perceptions into account and situates EU actorhood in the international system. This fourth condition is labelled autonomy, recognition or opportunity. Jupille and Caporaso<sup>97</sup> furthermore in 1998 offered a more internal focused conceptualisation, where they focus more strongly on coherence by distinguishing between value cohesion, tactical cohesion and procedural cohesion. They also add the legal competence of the EU to act on behalf of the member states as condition of authority.

These scholarly concepts provide an excellent starting point to consider what aspects are relevant to assess the impact of the use of different policy options on the EU's international actorhood. Table 8 provides an overview of how the criteria from the scholarship have been aligned with the assessment criteria selected for this study.

<sup>93</sup> See for example Bretherton, C. & Vogler, J. (2013). [A global actor past its peak?](#) *ibid*; Gehring, T., Oberthür, S. & Mühleck, M. (2013). [European Union Actorhood in International Institutions: Why the EU Is Recognized as an Actor in Some International Institutions, but Not in Others](#), *ibid*; Niemann, A. & Bretherton, Ch. (2013). [EU External Policy at the Crossroads: The Challenge of Actorhood and Effectiveness](#), *ibid*; Schunz, S. & Damro, C. (2020). [Expanding actorhood to explain EU external engagement in originally internal policy areas](#), *Journal of European Public Policy* 27(1), pp. 122–40. For an excellent overview of the debate see Rhinard, M. & Sjöstedt, G. (2019). [The EU as a Global Actor: A new conceptualisation four decades after 'actorhood'](#). Swedish Institute of International Affairs Paper 6/2019.

<sup>94</sup> Niemann, A. & Bretherton, Ch. (2013). [EU External Policy at the Crossroads: The Challenge of Actorhood and Effectiveness](#), *ibid*, p. 262.

<sup>95</sup> Sjöstedt, G. (1977). *The External Role of the European Community*. Westmead UK: Saxon House.

<sup>96</sup> Rhinard, M. & Sjöstedt, G. (2019). [The EU as a Global Actor: A new conceptualisation four decades after 'actorhood'](#), *ibid*, p. 6.

<sup>97</sup> Jupille, J. & Caporaso, J. (1998). *States, Agency and Rules: The European Union in Global Environmental Politics*, in Rhodes, C. (ed.) *The European Union in the World Community*, Boulder.

Table 8: Assessment criteria derived from EU actorness debate

Assessment Criteria for this study	Sjödstedt's conditions for actorness (1977)	Characteristics of EU actorness in EU foreign policy scholarship 1977-2010 <sup>98</sup>	Jupille and Caporaso (1998) <sup>99</sup>
<b>Timeliness</b>	take decisions under conditions of urgency	<b>Coherence</b> of values, preferences or policy	<b>Value Cohesion</b> (the degree of common basic goals)
			<b>Tactical Cohesion</b> (availability of methods to make diverging goals fit one another)
			<b>Procedural cohesion</b> (degree of consensus concerning how to process issues of conflict)
<i>Not relevant for this study</i>	mobilize specific tools and related actors	<b>Capabilities</b>	
<b>Efficacy</b>	articulate interests and mobilize resources	<b>Consistency</b> as commitment to agreed positions or 'fealty to implement'	<b>Output Cohesion</b> (extent of success in formulating common policies)
<b>External Recognition</b>		<b>Autonomy, Recognition, Opportunity</b> (international perceptions)	<b>Recognition:</b> acceptance and interaction with others <b>Autonomy:</b> distinctiveness of EU apart from sum of its member states
<i>Not relevant for this study</i>			<b>Authority</b> Legal competence to act

For our first assessment criterion of '**timeliness**', we follow Sjödstedt's definition of the ability 'to take decisions under conditions of urgency'. As such the criteria does not directly refer to the cohesion of values or diverging goals or consensus seeing processes, as Jupille and Caporaso would suggest, but the aspect that is most relevant for this study is if the EU system is able to **align values and diverging goals in a timely manner and in line with prior policy decisions, especially in moments of urgency**. What is key to point out here is that it is not – as often wrongly assumed in public debates - about preferences that need to align, but about member states being willing and able to adjust their positions on a given policy position in a way that they are best in line with their pre-held preferences<sup>100</sup>. It is therefore not preferences that need to change or become more similar, but member states need to have the willingness to pursue their preferences through exploring different positions on a policy that allows a better compromise.

<sup>98</sup> Rhinard, M. & Sjödstedt, G. (2019). [The EU as a Global Actor: A new conceptualisation four decades after 'actorness'](#), *ibid*, p. 8.

<sup>99</sup> Jupille, J. & Caporaso, J. (1998). *States, Agency and Rules*. *ibid*.

<sup>100</sup> Maurer, H. & Wright N. (2021a). *ibid*.

This first criteria of **timeliness** picks up on the often-voiced critique that the EU is too slow in reacting to international crises and does take too long to deliberate and consider the different voices, especially from member states. Furthermore, the criterion of timeliness is also meant to reflect the EU's ability to timely adjust towards changing contexts. This is also in line with Hocking's argument that 'the ability to respond speedily to the ever-quickening flow of events is deemed a key measure of actor capacity'<sup>101</sup>.

We need to remember that for the EU and its foreign policy-making processes the key function of the Council as highly institutionalised negotiation forum is to enable member states to make timely decisions, supported by the HR/VP and in coordination with the European Commission. The Political and Security Committee (PSC), with ambassadors from EU member states specialised on foreign policy discussions only, was supposed to facilitate the finding of collective, timely decisions, and the increased rate with which this body prepares and pre-decides Foreign Affairs Council conclusions showcases the need for such a dedicated foreign policy negotiation venue, where member states nearly daily can exchange, justify their positions and aim for finding a collective EU decision<sup>102</sup>. Since the Lisbon Treaty, the chairmanship of the PSC has been moved to a fixed EEAS chair 'to improve effectiveness in CFSP negotiations' but research also shows that 'recent deadlocks challenge such expectations'<sup>103</sup>. Without member states taking up the role of chair, it is easier to fall back into dynamics of member states versus the EEAS, and it influences negotiation dynamics if member states get the impression that their positions are not as sufficiently considered as if the chair would be 'one of them'<sup>104</sup>.

The second criteria deduced from the actorness debate is the aspect of '**efficacy**' as the 'fealty to implement'. Sjöstedt had defined this criterion as the ability to articulate interests and mobilise resources for this effect, with other scholars rather talking about consistency, defined as the **commitment to pursue agreed positions**. Similarly, Jupille and Caporaso refer to cohesion as the success of formulating common policies.

In the realm of EU foreign policy this criterion is particularly relevant because the EU as a foreign policy actor rather represents a system of foreign policy coordination than a unitary actor (such as federal systems like the US) with EU member states keeping their national foreign policies in parallel to their ambition to collectively formulate and implement EU foreign policies. In implementation this means that the implementation of agreed positions happens on EU level through the institutions (HR/VP, EEAS, Council, European Commission, parliamentary diplomacy through European Parliament) but also through the national actions taken by member states. This peculiarity is really the **unique aspect that sets the EU apart from other foreign policy actors**.

In this study, we on purpose focus on **efficacy as the 'commitment to implement'** rather than the often-used concept of 'effectiveness'. Effectiveness refers to the accomplishment of a purpose or the production of an intended result. This means that effectiveness is not only about the commitment and capacity of an actor to implement, but predominantly about what effect the chosen output has on the ground in a third country. For the whole causal chain of effectiveness, efficacy as the 'commitment to implement the agreed position' is the first necessary building block, but after that other factors like the choice/availability of the right instruments, local circumstances or external veto-players play an equal and sometimes even bigger role than the commitment of our

<sup>101</sup> Referenced In Edwards 2013, p 178- Brian Hocking, 'Diplomacy', in Walter Carlsnaes, Helene Sjørnsen and Brian White (eds.), *Contemporary European Foreign Policy* (London: SAGE, 2004), p. 97.

<sup>102</sup> Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) *ibid.*

<sup>103</sup> Juncos, A. & Pomorska. K. (2023a). [The Role of EEAS Chairs in Council Negotiations on Foreign and Security Policy Post-Lisbon](#). *Journal of Common Market Studies* (early view).

<sup>104</sup> Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) *ibid.*

foreign policy actor to implement. To put it in more simple terms: efficacy refers to the commitment of an actor to follow-up with action to implement the decision taken. Effectiveness, on the other hand, needs (in varying degrees) the commitment of an actor to implement, its capacity to turn this commitment into action, the availability and choice of suitable instruments, no unfavourable conditions on the ground and no opposition of other external actors. For the assessment of policy options here it would go so far to consider the full chain for effectiveness, and we therefore are going to focus on the foreign policy quality of efficacy. If the EU switches from one policy option to another, we should be able to infer if the EU's commitment to produce an effect is changing.

In the assessment it showed that it is helpful for the line of argument to keep a differentiation between **efficacy through national means** and **efficacy through EU means**. The underlying reason for this differentiation is that we must not forget that the CFSP has not been integrated and therefore has not been moved 'up' to the EU level. This means that once a collective CFSP decision is taken, we have two possible levels for implementation: EU actors like the HR/VP or the EU ambassadors can yield EU instrument to put the decision into force, but also member states are encouraged to actively pursue the agreed policy decision (or as the treaty states, to at least not do anything that would go against the collectively agreed goal). Efficacy through national means refers to the use of national tools to implement the decision, while efficacy refers to the implementation on EU level. This differentiation is necessary in the assessment as at times a policy option increases efficacy through national means but does not impact efficacy through EU means (or vice versa).

The criterion is thus going to consider how efficacious a policy option is, but in doing so it is also going to add three more dimensions: first, it is going to consider if the policy option makes an EU decision more **sustainable** (i.e. the commitment to implement a taken decision remains stable over time). An additional dimension worth considering here as well is the **intensity** of agreed EU action and its implementation, i.e. if the EU not only mobilises some resources to achieve articulated interests, but if it mobilises meaningful resources that will achieve the articulated interests in a purposeful and even forceful manner. Thirdly, it is going to consider how **salient** the decision is considered by involved actors at the time of the decision-making.

The third criterion that this study is going to use from the EU actorness debate is '**external recognition**'. This criterion refers to the recognition and acceptance of the EU as a relevant interlocutor by third parties that goes beyond seeing the EU as the sum of its member states. It is about the increase of recognition of the EU as an actor, which is also strongly linked to the credibility that the EU is attributed to as an international actor. It is included here as a core assessment criterion also because the challenge for the EU in regard of its recognition is that it has all the state-like qualities of an international actor, but international law through its focus on states only does deny the EU the same automatic legal status as states. This is also why external recognition is even more relevant for the EU as an international actor than for state actors and why this criterion has been taken forward as a core criterion.

Capabilities and authority have been two other criteria in the scholarship, but both are not directly relevant as additional criteria for assessing the impact of policy options. Capabilities refers to the ability to use certain instruments, which is already covered by efficacy. Furthermore, a switch in policy options is neither going to influence the instruments available to EU foreign policy nor is it going to change the legal competence to act in EU foreign affairs. These two criteria are thus labelled as not relevant for this study and are not going to be taken forward to the assessment.

Now that we deducted the relevant core criteria of timeliness, efficacy and external recognition from the EU actorness scholarship, we are going to move to the second aspect relevant for this assessment: the democratic quality of EU decision-making in the CFSP. Again the scholarly debate



and the main criteria for the democratic quality of the EU are going to be presented before the core criteria relevant for this study are going to be deducted and defined in detail.

## 4.2. Criteria from EU democracy scholarship

Since the inception of the European Union as a political Union with the Treaty of Maastricht, democracy is a key quality of the EU as a political system. Legitimacy is a key characteristic of any democratic system, and it is achieved when citizens can hold their policy-makers accountable through representative mechanisms or when citizens can dismiss their policy-makers in elections. Legitimacy is the 'general acceptance by a given population of a stipulated political order'<sup>105</sup>. Scholars distinguish three types of legitimacy: input, throughput and output legitimacy<sup>106</sup>.

**Input-legitimacy** refers to the 'political participation by the people and citizens representation of the people'<sup>107</sup> and is often termed as well as 'governing by the people'. In foreign policy terms is mostly equated with national or European parliamentary accountability<sup>108</sup>, or also the Conference on the Future of Europe is an example of instrument to increase input-legitimacy. **Output-legitimacy** refers to the policy quality or the 'governing effectiveness for the people'<sup>109</sup> or 'governing for the people'. In EU foreign policy Raube and Tonra observe a long-standing permissive consensus that accompanied the EU's output legitimacy, 'grounded in the extent to which these policies have delivered on widely-sought goals (peace, security, prosperity, etc.)'<sup>110</sup>. **Throughput legitimacy** refers to the quality of the decision-making process and is also termed 'governance with people'. It is process-oriented and based on the interactions – institutional and constructive – of all actors engaged in EU governance' and refers to qualities like 'efficacy, accountability, transparency, inclusiveness and openness of the governance processes'<sup>111</sup>

Tonra and Raube show that while output-legitimacy was the focus of early EU foreign policy scholarship, the questions of input and throughput legitimacy gained more attention in the past decade<sup>112</sup>, also because of the 'worsening of that democratic deficit through processes of Brusselisation and/or Europeanisation'<sup>113</sup>. The democratic deficit has increased due to more decisions taken outside of the deliberations of national parliaments and national public discourses. Schmidt suggests that this left 'politics without policy' in the national democratic arenas but moved 'policy without politics' to the collective decision-making venues in Brussels<sup>114</sup>. Democratic politics, i.e. deliberations and contestation, are still mostly taking place in the context of national parliamentary control mechanisms and within national public spheres. Politics is thus still very much happening in the national capitals. European integration and the move to collective decisions to Brussels-based actors though, moved the locus of policy decisions to Brussels and out of the national deliberation and contestation spheres, what in turn lead to a decoupling of politics from policy. In

<sup>105</sup> Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*, p. 241.

<sup>106</sup> Scharpf, F. (2009). [Legitimacy in the Multilevel European Polity](#). *European Political Science Review* 1(2), pp. 173–204. Schmidt, V. (2013). [Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput](#). *Political Studies* 61(1), pp. 2–22. Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*

<sup>107</sup> Schmidt, V. (2013). [Democracy and Legitimacy in the European Union Revisited](#). *ibid.*, p. 9.

<sup>108</sup> Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*, p. 242.

<sup>109</sup> Schmidt, V. (2013). [Democracy and Legitimacy in the European Union Revisited](#). *ibid.*, p. 9.

<sup>110</sup> Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*, p. 242.

<sup>111</sup> Schmidt, V. (2013). [Democracy and Legitimacy in the European Union Revisited](#). *ibid.*, p. 3.

<sup>112</sup> See for example Sjørnsen, H. (2018). [The legitimacy of European Union foreign policy](#). *Global Affairs* 4(2–3), pp. 253–64.

<sup>113</sup> Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*, p. 241.

<sup>114</sup> Schmidt, V. (2009). [Re-Envisioning the European Union: Identity, Democracy, Economy](#). *ibid.*

the area of foreign policy, there were no integration processes taking place but a continuous 'Brusselisation'<sup>115</sup> of the CFSP has still been taking place, where fundamental directions of foreign policy decisions are rather discussed and decided in Brussels between national governments, whereas the democratic politics in regard of these decisions takes place when national parliaments hold their governments to account for decisions taken.

This does not imply that decision-making powers have been delegated to other actors than national governments, but the democratic accountability of national governments works differently when these decisions are taken away from national democratic deliberations. Remedies proposed by scholars are threefold<sup>116</sup>: the strengthening of national or European parliamentary accountability, a stronger stakeholder engagement and the strengthening of the European public space for deliberating foreign policy choices.

The three types of legitimacy developed in the EU democracy scholarship - input, throughput and output legitimacy - are considered necessary and relevant in democratic systems, but they are also relevant for the assessment in this study, as shown in Table 9.

Table 9: Assessment criteria derived from democratic legitimacy debate

Assessment criteria		3 types of legitimacy
<b>Input Legitimacy</b>		<b>Input legitimacy</b> (governance <i>by</i> people) direct participation by people and by their representatives
<b>Throughput Legitimacy</b>	Accountability	<b>Throughput legitimacy</b> (governance <i>with</i> people) quality of governance process in terms of accountability, transparency, inclusiveness and openness
	Transparency	
<b>Identification of member states as EU collective</b>	Solidarity & Inclusiveness & Openness	
Avoidance of undue <b>External Influence</b>		<b>Output legitimacy</b> (governance <i>for</i> people) better policy results for EU citizens

In the context of this study, **input legitimacy** refers to the opportunity of political participation by the people and their representatives. In the realm of foreign policy it is mostly equated with national or European parliamentary participation. It is unlikely that a change in policy options in the CFSP is going to have a major influence on the political participation by citizens, but the second aspect of parliamentary participation is a highly relevant aspect that needs to be considered in the assessment of policy options, particularly because of the increased demands to increase the democratic quality of foreign policy-making.

Throughput legitimacy refers to the quality of the governance process, for which we are going to consider two criteria in this study. This refers to the relationship between citizens and the selected/elected decision-makers, but it does not refer to the quality of interactions between

<sup>115</sup> Allen, D. (1998). Who speaks for Europe? *ibid.*

<sup>116</sup> Raube, K. & Tonra, B. (2018). [From internal-input to external-output](#). *ibid.*; see also Tonra, B. (2011). [Democratic foundations of EU foreign policy: narratives and the myth of EU exceptionalism](#). *Journal of European Public Policy* 18(8), pp. 1190–1207.

member states' governments. First **throughput legitimacy** as criteria is going to assess both the degree of accountability and transparency. Both refer to the quality of the governance process. **Transparency** indicates the ability of political representatives and/or citizens to be able to understand how decisions are made and by whom. Foreign policy decisions are particularly prone to the argument that sensitive information cannot be disclosed due to security interests, and often stakeholders need to have security clearance from member states to be able to assess public documentation in the realm of the CFSP. Nevertheless, citizens and parliamentary representatives need to have the possibility to be able to understand how certain decisions have been taken. The closed-door policy of most Council negotiations is often pointed to as a hinderance to transparency, but it also needs to be considered that full openness would make effective negotiations between members states impossible. A democratically appropriate balance thus needs to be found also in foreign policy deliberations between allowing transparency without endangering the ability of the EU to come to decisions. **Accountability** needs a certain degree of transparency, but it also goes a step further and needs processes in place that enable the envisaged control of political power: it refers to the ability of parliamentary representatives and/or citizens to hold political decision-makers accountable for decisions taken in Brussels. In the current legal setting, this refers to European parliamentary control vis-à-vis the HR/VP and the College of Commissioners and to national parliamentary control vis-à-vis national governments as members of the Council and the European Council. The ability for national parliaments to hold their governments accountable for foreign policy decisions varies considerably across EU member states and depends on the constitutional features of national political systems. We know though that foreign policy aspects are rarely considered as salient in national public and parliamentary discourses as national public policy debates. Another point for discussion here is also how strong the chain of parliamentary accountability reaches into the foreign policy bureaucracies of EU member states, taking into consideration that many foreign policy decisions are already agreed upon the level of PSC ambassadors before the decisions even reach the Foreign Affairs Ministers in the Council.

As the quality of the governance process also impacts the commitment of member states to the collective foreign policy process, we are going to add a separate second criterion to throughput legitimacy: the **identification of member states as EU collective**. In some debates this criterion is referred to as 'solidarity', but it triggers a lot of different interpretations and will therefore not be used here. The underlying rationale for making the identification of member states as EU collective a criterion is again the peculiarity of the EU as a foreign policy *system*, which works quite differently from e.g. federal systems where there is one unitary foreign policy decision-maker (i.e. the president in the US). The 'CFSP is a system created to manage, mediate and regulate the differing (sometimes sharply) and competing (sometimes significantly) interests of EU member states, based on the fundamental condition that member states have a shared interest in maintaining the integrity of the system and its capacity to operate. Although the system possesses some centralised institutional features – notably the HR/VP, EEAS and PSC – decision-making itself is not centralised and competence has not been delegated'<sup>117</sup>. In debates it is often very quickly assumed that interests of member states need to be the same or converge, for the EU to have a foreign policy position. Yet, this claim presupposes a very unreflective and simplistic understanding of cooperation modes that only assumes game theoretical processes at play. Yet, beyond game theoretical cooperation that led to zero-sum games à la 'I win, you lose', cooperation is also possible in situations where actors pursue different interests but then define policies that serve them both. To give a concrete illustration: it is unlikely that Portugal has the same foreign policy concerns as e.g. Estonia, simply through its geographical location. Their interests do not necessarily need to converge, but their willingness to formulate positions on policies that allow them to cooperate in a way that both their

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<sup>117</sup> Maurer, H. & Wright N. (2021a). *ibid.* p. 389

interests are served. This distinction between mostly fixed *interests* and formulated *positions* is therefore key for a cooperation system like the EU.

However, while the decision-making power lies firmly in the hands of national governments, they are not only states anymore but now also EU member states. This switch from 'nation state to member state'<sup>118</sup>, as Bickerton phrases it, refers to the idea that member states not only frame foreign policy decisions through their national lenses but that they also consider the good for the 'whole of the EU' in their policy deliberations. Member states committed to joint foreign policy action, and 'not only do they come together to agree common positions; the intensity of their interactions results in a change in their identities. (...) Being part of the foreign policy collective makes member states think not only in national terms but also in terms of the greater collective. It encourages them not to ignore issues that may not be directly relevant to them on the basis that any one issue could become a problem for the whole community'<sup>119</sup>. The identification of EU member states as collective is thus key for the functioning of the EU foreign policy system, which is meant to go beyond the least common denominator and is meant to be more than the 'sum of its parts'. A nuanced dimension of this collective identification is also the question if the policy option impacts the **inclusiveness** of EU decisions, i.e. if they make the policy-making process more likely to consider different voices across the EU and across EU member states.

The fourth criterion deducted from the EU democracy debate is the '**avoidance of undue external influence**'. While output legitimacy in terms of this study is a very general and unattainable category, it is relevant here in terms of how much the policy results reflect the best policy for EU citizens rather than undue external influence. We should therefore ask, if the policy option impacts the risk of the EU decision been exposed to undue external influence. This undue external influence could come in the form of bribes or other criminal measures to influence decision-makers, but it also needs to consider the manipulation of public discourses through increased disinformation.

### 4.3. The assessment criteria for this study

The following Table 10 summarises once more the seven criteria that have been selected due to their relevance for assessing the costs and benefits of the identified policy options. The key questions indicated in the table are the operationalisation of the defined criteria, which will be used for the assessment of the policy options in the next chapter.

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<sup>118</sup> Bickerton, C. (2013). [European Integration: From Nation-States to Member States](#). Oxford University Press.

<sup>119</sup> Maurer, H., Whitman, R. & Wright, N. (2023). [The EU and the invasion of Ukraine: a collective responsibility to act?](#) *ibid.* p 220 and p. 230.

Table 10: Main criteria for assessing the costs and benefits of policy options

	Assessment criteria	Key questions
EU international actorness	Timeliness	Does policy option make EU decision more timely? Does policy option make EU decision more flexible towards changing contexts?
	Efficacy	Does policy option make EU decision more efficacious? Does policy option make EU decision more sustainable? Does policy option make EU decision more forceful?
	External Recognition	Does policy option impact recognition of EU as a distinct and relevant international actor? Does policy option impact perception of EU credibility?
Democratic policy-making	Input Legitimacy	Does policy option impact the political participation of citizens? Does policy option impact the ability for national or European parliamentary participation
	Throughput Legitimacy	Does policy option make process more accountable? Does policy option make process more transparent?
	Identification of member states as EU collective	Does policy option make EU decision more inclusive (of different voices)? Does policy option impact the identification of member states as collective?
	Avoidance of undue External influence	Does policy option impact the risk of the EU decision been exposed to undue external influence?

Each policy option is going to be scored according to the seven criteria in the next chapter. For a comparative assessment each criterion is going to be scored in the manner indicated in Table 11. We depart from the **status quo, which is scored with 0** and then assess if the use of the policy option is more likely to lead to a positive (1 and 2) or negative change (-2 and -1) on the respective criteria. For both options we distinguish between a major impact (-2 and 2) and a minor impact (-1 and 1). How this translates for each criterion is summarised in Table 12.

Table 11: Scores for each criterion from major negative to major positive impact

	-2	-1	0	1	2
Criterion	Major negative impact of policy option	Minor negative impact of policy option	No discernible Impact of policy option <b>STATUS QUO</b>	Minor positive impact of policy option	Major positive impact of policy option

Table 12: Scoring of Impact of policy options on assessment criteria

	With the introduction of the alternate policy option XYZ...				
	-2	-1	0	1	2
Timeliness	Major decrease of timeliness	Minor decrease of timeliness	No discernible Impact <b>STATUS QUO</b>	Minor increase of timeliness	Major increase of
Efficacy	Major decrease of efficacy	Minor decrease of efficacy	No discernible Impact <b>STATUS QUO</b>	Minor increase of efficacy	Major increase of efficacy
External Recognition	Major decrease of external recognition	Minor decrease of external recognition	No discernible Impact <b>STATUS QUO</b>	Minor increase of external recognition	Major increase of external recognition
Input Legitimacy	Major decrease of input legitimacy	Minor decrease of input legitimacy	No discernible Impact <b>STATUS QUO</b>	Minor increase of input legitimacy	Major increase of input legitimacy
Throughput Legitimacy	Major decrease of accountability and transparency	Minor decrease of accountability and transparency	No discernible Impact <b>STATUS QUO</b>	Minor increase of accountability and transparency	Major increase of accountability and transparency
Identification of member states as EU collective	Major decrease of identification of EUMS as collective	Minor decrease of identification of EUMS as collective	No discernible Impact <b>STATUS QUO</b>	Minor increase of identification of EUMS as collective	Major increase of identification of EUMS as collective
Avoidance of undue external influence	Major increase of undue external influence	Minor increase of undue external influence	No discernible Impact <b>STATUS QUO</b>	Minor decrease of undue external influence	Major decrease of undue external influence

## 5. Assessment of policy options

This chapter five assesses the identified policy options. It brings together the development of assessment criteria from chapter 4 with the policy options that have been developed in chapter 3. Each policy option is now going to be assessed in terms of its potential impact on the seven assessment criteria, with the impact scored between major decrease of criteria due to use of policy option (-2), minor decrease (-1), no discernible impact (0), minor increase (1) and major increase of criteria due to use of policy option (2) (see also table 11 above).

These scores have been developed as an **assessment tool** to enable the comparison of the policy options. The numbers are showcasing the extent of impact according to the five scores mentioned above. In terms of measurement level this data is **on an ordinal level**, which allows inferences about ranks and comparison but does not allow additional inferences like equal intervals, standard deviation or other statistical measures. It also needs to be kept in mind that the **any further assessment would depend on the weight that is given to the seven criteria**, i.e. any ranking of policy options is dependent on what is meant to be achieved or how the assessment criteria are prioritised.

We follow the same distinction of policy options as in chapter 3, with a differentiation between:

- decision-making options that are possible within the current legal framework (chapter 5.1),
- decision-making options with treaty change but within the existing transgovernmental policy-mode (chapter 5.2) and
- decision-making options with treaty change that go beyond the current transgovernmentalism (chapter 5.3).

Each of the three parts is going to provide an assessment of the selected policy options according to the seven criteria. First, we are going to assess the impact of the policy option in general terms before we consider how the assessment according to the seven criteria would play out in **three selected policy areas** (adoption and amendment of EU sanction regimes; civilian CSDP missions; EU positions on Human Rights in multilateral fora). The three selected policy areas share some commonalities but also differ in how the policy options are likely to impact them according to the chosen criteria. Through this assessment the aim is to critically discuss and showcase the cost and benefits of the various policy options in general terms but also across the three policy areas.

The **adoption and amendment of EU sanctions** (Art. 29 TEU) is a foreign policy instrument increasingly used by the EU - as also by other international actors - to react to unsettling conflicts, democratic backsliding or other international wrong-doing.<sup>120</sup> Sanctions can come in many different shapes ranging from economic sanctions to asset freezes or visa bans against individuals. Sanctions are meant to disturb established interdependencies, which also means that they come at a cost for the entity that puts them into place. For EU sanctions the challenge is that they only have a strong effect if they are applied across the whole of the EU, so that they do not challenge the integrity of the internal market (e.g. for economic sanctions) or harm the integrity of the Schengen area and its free movement of people (e.g. for travel bans). This is also the reason why the legal follow-up EU directive that is necessary to implement CFSP sanction decisions has so far always been adopted by consensus<sup>121</sup>. Once the legal act is in place, all member states are required to implement the EU legislation on sanctions, as otherwise they would be in violation of EU law. In terms of EU sanctions,

<sup>120</sup> Meissner, K. (2023). [How to Sanction International Wrongdoing?](#) The Design of EU Restrictive Measures. The Review of International Organizations 18(1), pp. 61–85; Meissner, K. & Portela, C. (2022). [Beyond Foreign Policy?](#) EU Sanctions at the Intersection of Development, Trade, and CFSP. Politics and Governance 10(1), pp. 1–4.

<sup>121</sup> Anonymous Interview, April 2023.

it also needs to be kept in mind that their objective very often also has a symbolic dimension: even if the EU is aware that the imposed sanction is not going to reverse a certain action taken by a third party, the adoption of the sanction is meant to impose costs for the third actor but also signal the EU's disapproval of the action. While sanctions need to be in line with international law, it also needs to be considered that sanctions at times lead to counter-sanctions, which increase the costs for the sanctioning state and its citizens.

The **adoption of EU human rights positions** (Art. 21 TEU) requires unanimity by member states first. This unanimity/consensus can be negotiated in Brussels or also among diplomats from member states on the ground (e.g. in Geneva for the Human Rights Council or in New York for the UN bodies there). Only once all member states agreed, a formal statement on behalf of the EU can be issued. If not all member states agree, then it is custom that the presidency or a selected member states communicates the statement on behalf of those member states that support the statement. This also translates to declarations or statements issued by the HR/VP, who can do so 'on behalf of the EU' upon prior agreement by all member states or can issue only a statement 'on behalf of the HR/VP' in case this consent has not been granted.

The ability of the EU to have legal personality and issue statements 'on behalf of the EU' is a possibility only since the Lisbon Treaty.<sup>122</sup> The Council General Secretariat confirmed in 2011 that 'the EU can only make a statement in those cases where it is competent and there is a position which has been agreed in accordance with the relevant Treaty provisions'<sup>123</sup> and that the applied practice does not have any implications for the division of competences as agreed in the TEU. Human rights statements have a highly symbolic impact, although it must not be ignored that the condemned third party might consider retaliatory measures. Yet the effect of such retaliatory measures is often much weaker compared to counter-sanctions and is mostly also hardly felt by the public(s) of the states issuing the human rights statement.

The last policy option under assessment is the adoption of **civilian CSDP missions** (Art. 43 TEU) Since 2003, this latter has undertaken 37 overseas missions, both civilian and military operations. As of today there are 21 ongoing CSDP missions and operations, 12 of which are civilian, and 9 military<sup>124</sup>. Decisions to establish and to launch missions and operations require the approval of all Member States through a Council Decision. It is key to understand that 'civilian CSDP missions are staffed by personnel who are seconded to them by EU member states (or participating non-EU states) on a voluntary basis and by personnel who are contracted by these missions directly'<sup>125</sup>. Due to the decreasing number of member states contributions to civilian CSDP mission, the EU and its member states had agreed the Civilian Common and Security and Defence Policy Compact in November 2018<sup>126</sup>, which has also been reconfirmed by a Council conclusion in December 2021<sup>127</sup>. Furthermore, civilian missions are considered only upon consent (or invitation) of the receiving country, which makes them much less externally contested than e.g. human rights statements or the adoption of sanctions.

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<sup>122</sup> Wessel, R. & Van Vooren, B. (2013). [The EEAS's diplomatic dreams and the reality of European and international law](#). *Journal of European Public Policy* 20(9), pp. 1350–67.

<sup>123</sup> General Secretariat of the Council. (2011). [EU Statements in multilateral organisations](#) - General Arrangements. 15901/11.

<sup>124</sup> See EEAS Website: [https://www.eeas.europa.eu/eeas/missions-and-operations\\_en#11930](https://www.eeas.europa.eu/eeas/missions-and-operations_en#11930)

<sup>125</sup> Smit, T. (2020). [Increasing Member State Contributions to EU Civilian CSDP Missions](#). SIPRI.

<sup>126</sup> EEAS Website on Civilian Compact 2018: [https://www.eeas.europa.eu/eeas/civilian-compact\\_en](https://www.eeas.europa.eu/eeas/civilian-compact_en)

<sup>127</sup> Council (2021). [Council Conclusions on Civilian CSDP Compact](#). 14740/21.



## 5.1. Assessment of decision-making options within current legal framework

This first set of policy-options assesses decision-making modes that are possible within the current legal framework of the CFSP, and which have been highlighted as 'quick wins' to address suggestions from the Conference on the Future of Europe, which final report had suggested QMV as a major remedy to existing shortcomings. It starts with the existing policy-mode of 'unanimity' before considering a more active use of constructive abstention (Art. 31(1) TEU) or the use of QMV as follow-up to unanimous strategic decisions by the European Council (Art 31(2) TEU). We then look at the brake clause of the 'Luxembourg Compromise' (Art 31(2) TEU) and the opportunity for differentiated integration. Last, we are going to assess the proposal to progressively activate passerelle clause in the CFSP (Art. 31(3) TEU). The concluding part of this chapter is going to provide an overview of the overall scoring across the different policy options and synthesise the main findings about how the decision-making options within the current legal framework scored across the seven core criteria.

### 5.1.1. Continued use of unanimity

The first policy option under assessment is the **continued use of unanimity** in the CFSP (Table 13), where we assume that unanimity remains the default decision-making mode in the CFSP and provides veto-power to each EU member state.

Table 13: Assessment of policy option 'unanimity'

Continued Use of Unanimity - Art. 31(1)		
Default formal decision-making mode in CFSP; Gives veto-power to each EU member state		
Criterion	Score	Argumentation
Timeliness	Minor decrease	Minor decrease of timeliness: increased complexity and an accelerating occurrence of 'wicked problems' requires agile, flexible and transformative policy responses. Increased demand for agility makes EU decisions even less timely and less flexible towards changing contexts.
		Same across all three policy areas.
Efficacy*	- md	Efficacy through national means: no discernible impact to be expected. Efficacy through EU means: minor decrease in efficacy.
		Matters for adoption of human rights positions and sanctions; no impact on civilian CSDP missions
External Recognition	Minor decrease	Minor decrease of external recognition: external recognition and credibility decrease if EU is inconsistent in its pursuit of declared values and interests, if main reason is veto of one or few member states.
		Same across all three policy areas.
Input Legitimacy	No impact	No impact on political participation of citizens or of national or European parliaments
		Same across all three policy areas.
Throughput Legitimacy	No impact	No impact on accountability or transparency
		Same across all three policy areas.
Identification of member states as EU collective	Minor decrease	Counterintuitively, major decrease of identification of EUMS as collective: rejection of procedural norms (such as honest justification for veto) decreases, we-feeling and community-spirit long term
		Same across all three policy areas.
Avoidance of undue external influence	Minor decrease	Minor decrease of the avoidance of undue external influence: third parties over time increasingly recognise the possibility to influence EU decisions through strategic vetos of MS, especially with a decreased collective identification
		Matters for adoption of human rights positions and sanctions; no impact on civilian CSDP missions

\* Note: For Efficacy there are two scores: 'efficacy through national means' and 'efficacy through EU means'.

For assessing the impact of the continued use of unanimity on **timeliness**, we need to consider that international and global politics is marked by an increased complexity and an accelerating occurrence of 'wicked problems', which require agile, flexible and transformative policy responses.<sup>128</sup> Traditional policy-making processes will persist, but the challenge to react timely and

<sup>128</sup> See, for example, Barnett, M., Pevehouse, J. & Raustiala, K. (2021) (eds.), [Global Governance in a World of Change](#). Cambridge University Press; Barnett, M. & Duvall, R. (2004). [Power in global governance](#). Cambridge University Press;

flexibly, when needed, will grow. It is likely that the continued use of unanimity despite the increased demand for more agility will make EU decisions even less timely, and it will not allow the EU to react flexibly towards changing contexts. This decrease of timeliness can be expected to be minor in general through the next decade, but it can be assumed that the more complex a problem is going to be, the more unanimity will lead to a major decrease of timeliness.

When considering the three selected policy areas, it shows that timeliness matters for all three. EU positions on human rights in multilateral fora are time-sensitive and need to be issued when the topic is discussed and the political momentum for it to have effect is there, which is also why the European Commission suggested that for this policy area, 'moving to qualified majority voting will enable more efficient and timely EU action'<sup>129</sup>. The adoption and amendment of EU sanction regimes is due to its communicative element time-sensitive, and we must not forget that the purpose of sanctions is also to signal disapproval and to use the political momentum to clearly communicate this message to third parties and the international community. A delay might signal indecisiveness and doubt, which contradicts the idea of adopting sanctions in the first place. While the initial adoption of civilian CSDP missions might leave some time for deliberation, the European Commission highlights the time-sensitive nature of CFSP missions once they are running: 'Given the fluid environments in which such missions typically operate once established, they require effective and agile management'<sup>130</sup>. For all three policy fields therefore the continued use of unanimity is going to lead to a decrease in timeliness.

**Efficacy**, the second criterion of our assessment, refers to the ability of the EU to produce an effect once a decision has been taken, and the continued use of unanimity is likely to have a mixed result. Member states are also now politically bound to implement CFSP decisions, but a failure to do so does not have any immediate consequences. In practice we see that it is up to member states to decide how forcefully they use their national means to give effect to collective EU decisions, and it is unlikely that the continued use of unanimity will change anything in the EU's efficacy through national means. However, the continued use of unanimity influences the efficacy through EU means. EU actors can now only represent political positions by the EU or use EU means, once all member states have agreed. This means that the HR/VP or EU ambassadors can't take a position on behalf of the EU before there is a formal agreement by all member states either in the Council or through local coordination between ambassadors and their national instructions. Or the HR/VP can take a position, but it then does not represent the whole of the EU, but only a subgroup of member states<sup>131</sup>. When we take into consideration that much implementation in the foreign policy domain is through communication and diplomacy, this is a major obstacle that the EU is faced with, especially in comparison to other international actors, where the head of government can take such decisions, even if it brings internal contestation at home. While the impact on efficacy through national means is therefore not likely, the impact on efficacy through EU means might be decreased through the continued use of unanimity. However, normatively one might argue that the EU is

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Slaughter, A. (2017). [The Chessboard and the Web](#). Strategies of Connection in a Networked World. Yale University Press; Slaughter, A. (2018). [In the Digital Age, Foreign Policy Won't Be Decided by Presidents](#). Wired UK; Lovato, M., & Maurer, H. (2022). [Process and position power: a social relational research agenda about state power in negotiations](#). *Journal of European Public Policy* 29(12), pp. 1994–2006.

<sup>129</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, p. 12.

<sup>130</sup> European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). *ibid.*, p. 12.

<sup>131</sup> This was for example the case in 2021, when Hungary on short-notice withdrew its support for an EU human rights position in front of the UN Human Rights Council: [https://www.eeas.europa.eu/delegations/un-geneva/hrc48-item-4-group-statement-26-member-states\\_en](https://www.eeas.europa.eu/delegations/un-geneva/hrc48-item-4-group-statement-26-member-states_en). For more examples see Koenig, N. (2020). [Qualified Majority Voting in EU Foreign Policy: Mapping Preferences](#). Policy Brief Jacques Delors Center, Hertie School of Governance.

currently not a foreign policy actor/system where the whole can implement a position that has not been approved by all the member states.

When considering the three selected policy areas, there is some efficacy-difference to be expected. For civilian CSDP missions the national support in providing staff for the mission is essential, and EU efficacy is therefore highly dependent on the national contributions by member states. The continued use of unanimity for civilian CSDP mission is therefore not going to have an impact on their efficacy. For the adoption of EU sanction regimes and of EU positions on human rights in multilateral fora the situation looks a bit differently: the continued use of unanimity decreases the efficacy of the EU to pursue its declared human rights promotion or to support its declaration with action through restrictive measures, because in case where no unanimity is found the EU cannot take a position.

The continued use of unanimity is likely over time to decrease the **external recognition** of the EU as a relevant and credible international actor, if unanimity means that the EU is going to be inconsistent in its pursuit of declared values and interests. The issue here is not per se that international actors seem to make exceptions or inconsistent decisions, but other international actors can justify such courses of actions through the specific context or other reasons. In the case of the EU, the main reason for such inconsistent behaviour is always then that one or few member states disagreed about what harms the perceived actorness of the EU towards international partners. Of course there might also be a decrease in external recognition if the EU takes a position, uses EU means for implementation, but not all member states implement with the same enthusiasm on national level. Yet, these differences often go unnoticed and are part of the accepted peculiarity of the EU foreign policy cooperation system.

When considering the three selected policy areas, the recognition of the EU as a credible and reliable international partner depends on its swift and decisive way to react to human rights or international law violations through statements or restrictive measures; and civilian CSDP missions are only considered upon agreement with the host country, what leaves a bad perception if the EU then is not able to deliver the mission, if it has already been agreed upon with the partner. It therefore shows that the continued use of unanimity has a decreasing effect on external recognition across all three areas.

The continued use of unanimity is not going to have a discernible impact on **input legitimacy**, as it simply preserves the status quo in general and across all three selected policy areas. The same holds for accountability and transparency as indicators for **throughput legitimacy**. The lack of input and throughput legitimacy in the realm of the CFSP has been accepted as given so far, and there is no reason to assume that this might change in the future – except for extreme cases, where we might expect an increased overlap between internal policy objectives and foreign policy objectives.

Because of unanimity gives equal weight to each member state, it might sound counterintuitive at first, but it is the **identification of member states as EU collective** that is going to decrease the most with the continued use of unanimity, which would have the same effect across all three policy areas. The issue here is that in the last few years we saw an increased use of strategic vetoes<sup>132</sup>, which harmed the sense of being a collective community and reduced the negotiation arena to game theoretical thinking. One could argue that it is unanimity that gives each member state an equal voice, but this alone does not ensure the identification of member states as EU collective. If it needs

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<sup>132</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), *ibid.*; Maurer, H. & Wright N. (2021a). *ibid.*; Wessel, R. & Szép, V. (2022). [The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting](#), *ibid.*

to be a legal requirement to be heard by others, it means that the collective spirit is broken. While the move from unanimity to more flexibility divides member states as well, the increased turning away from collectively accepted procedural norms by some member states endangers the collective understanding of being part of and having responsibility for the protection of a bigger entity like the EU<sup>133</sup>.

With the continued use of strategic vetos by some member states it is also likely that third parties are recognising this route to influence EU decisions more strongly in the future, also due to the major decrease of collective identification and that we might therefore see a **minor increase of undue external influence**. As also other factors such as the political climate in member states and other constitutional safeguards will impact the degree of external influence, it is likely that this increase is rather minor than major. When considering the three selected policy areas, it is likely that this is going to be particularly relevant for the adoption of sanctions or positions against human rights violations, but it is going to be less prominent in decisions on civilian CSDP missions.

### 5.1.2. Increased use of constructive abstention

The **increased use of constructive abstention** by member states (see Table 14) is part of the suggested package to add more flexibility to the CFSP without treaty change. It is likely that an increased use of constructive abstention is going to **increase the timeliness of EU decisions**, as it is a way to avoid vetos. Even more so, a stronger acceptance of a more frequent use of constructive abstention is likely to change the negotiation dynamics, as it will ask for more flexibility by member states in their negotiation tactics, which will speed things up, especially in questions with high salience. No difference between the three selected policy areas is to be expected.

Table 14: Assessment of policy option 'constructive abstention'

Increased Use of Constructive Abstention		
Since Treaty of Amsterdam: EU decision does not apply to member state abstaining, but latter must not take action that goes against EU action.		
Criterion	Score	Argumentation
Timeliness	Minor Increase	Minor increase of timeliness due to changing negotiation dynamics and a more flexible demand towards negotiation tactics of member states.
		Same across all three policy areas.
Efficacy	No impact Minor increase	No impact on efficacy through national means, as abstaining member states do not need to implement. In highly salient issues though more decisive and efficacious EU through EU means and thus minor increase.
		Minor increase of efficacy for human rights positions; no impact on civilian CSDP missions; delicate/impossible in sanctions
External Recognition	No Impact	Benefits and costs balance each other out: increased recognition as decisive and reliable actor, but increased contestation leads to decreased recognition as autonomous actor
		Same across all three policy areas.

<sup>133</sup> Maurer, H. & Wright N. (2021a). *ibid.*

Increased Use of Constructive Abstention		
Since Treaty of Amsterdam: EU decision does not apply to member state abstaining, but latter must not take action that goes against EU action.		
Criterion	Score	Argumentation
Input Legitimacy	No impact	No direct impact on participation of parliaments or citizens. Would need parliamentary discourse prior to Council negotiations;
		Same across all three policy areas.
Throughput Legitimacy	No impact	No direct impact on accountability and transparency, as decisions made behind closed doors and often no justifications provided publicly.
		Same across all three policy areas.
Identification of member states as EU collective	Minor increase	Increases identification because decision of a member state to abstain instead to veto showcases that the member state cares as much about the whole of the EU (and thus of the others) as about its own position
		Same across all three policy areas.
Avoidance of undue external influence	Minor increase	Strategic vetoing is going to be reduced and therefore also the opportunity of undue external influence.
		Same across all three policy areas.

\* Note: For Efficacy there are two scores: 'efficacy through national means' and 'efficacy through EU means'.

The increased use of constructive abstention is going to have a mixed impact on **efficacy**. As those member states that abstain do not need to implement, it is unlikely that efficacy through national means is going to increase. Also it is unlikely that more sustainable decisions will be made, as abstaining member states might not be convinced and reopen similar debates later again. When salience is high though, it might allow EU to be more decisive and efficacious through its EU means, which would lead to a minor increase of efficacy. The latter would in particular be relevant for the adoption of human rights positions as there the EU could make a statement on behalf of the Union, even if the constructively abstaining member state is not proactively communicating the agreed decision and might raise its abstaining concerns in bilateral engagements. It would, however, still increase the efficacy through EU means. The issue is more delicate – if not politically impossible – in the realm of sanctions. Sanctions are normally adopted on EU level and with the agreement of all member states<sup>134</sup> to preserve the integrity of the common market (in case of economic sanctions) or the integrity of the Schengen area (in case of travel bans etc). If a member state would constructively abstain, it would then not need to implement, what would distort common policies and lead to contradictions. No impact is likely in the case of civilian CSDP missions, as here active contributions from member states are key for implementation. The latter would depend on how many member states abstain, and if those supporting the mission can provide the necessary tools and resources needed to pursue the mission successfully.

The increased use of constructive abstention is going to have no impact on **external recognition**, as the costs and benefits are going to balance each other out. The EU is likely to be more recognised as decisive and reliable actor, but too much internal contestation through abstentions might also

<sup>134</sup> Interview with Member state, April 2023: directives to implement sanctions so far always adopted by consensus as otherwise harmful effect on EU territory.

harm its perception as an autonomous actor that is more than the (necessary) sum of its member states. No difference between the three selected policy areas is assumed.

No direct impact on **input legitimacy** through the increased use of constructive abstention is likely. Only in cases where the constructive abstentions of member states would be made a topic in national parliaments, we would assume an increase of input legitimacy. But as this has not been the case in instances where constructive abstention has been used, it is likely to not have an impact. Timing for national discourses matters here too: we see individual heads of government to use decisions on EU level to gain public support at home after the decision has been taken, but there has so far been no substantial discussion of possible positions of a country prior to such negotiations that would have increased the participation of parliaments or citizens. There is also no direct impact on **throughput legitimacy**, i.e. accountability and transparency. The use of constructive abstentions alone does not increase accountability or transparency, as these decisions are made behind closed doors. The abstention of member states is communicated afterwards, but justifications are not always provided, and it is therefore not only that transparency is not ensured but also accountability is impossible without knowing the reasons for abstentions. If national governments would use this moment to explain to their parliaments and voters, why they abstained there would be an opportunity to increase accountability, but again it would depend on the political behaviour of political representatives in their national political arena.

The increased use of constructive abstention is going to increase the **identification of member states as EU collective**. Because not all member states need to agree, it might seem counter-intuitive at first. It is, however, likely that the increased use of constructive abstention increases the identification of member states as EU collective, because the decision of a member state to abstain instead to veto showcases that the member state cares as much about the whole of the EU (and thus of the other member states) as about its own position. It shows respect for the collective good and the reputation of the whole of the EU, what in turn increases the identification with the collective. No variation across the three selected policy areas is to be expected.

The increased use of constructive abstention is going to decrease the risk of **undue external influence**. Due to the need to justify vis-à-vis the others, a member state will need to stick to the issue at hand to justify the abstention. If the member state does not provide sound arguments, it would need to veto. A member state might have other (domestic) reasons to abstain but the perception that they veto because of undue external influence is going to decrease dramatically, what in turn is going to have an impact on how third parties think they can influence EU decision-making, what over time will lead to a minor decrease of undue external influence.

### 5.1.3. QMV as follow-up to unanimous strategic decisions

The **use of QMV as follow-up to unanimous strategic decisions** (see Table 15) would lead to a mixed result in terms of **timeliness**. On the one hand, QMV in the Council (as defined by Art. 16(4) TEU) to implement strategic decisions taken by the European Council by unanimity would lead to an increase of timeliness. On the other hand, it is however likely that such a situation is going to make some deliberations in the European Council more difficult and time-consuming, as member states will very carefully assess what they agree to before they can later be outvoted in the implementation phase in the Council. The deliberations for civilian CSDP missions might be easier as there is no indirect effect on future missions, but in the adoption of human rights positions and sanctions member states might be more cautious in setting a precedent for future decisions. Such dynamics would delay European Council decisions, but it is less likely to influence the Council. Thus, we should expect the same effect across all three policy areas once the dossier is with the Council.

Table 15: Assessment of policy option 'QMV as follow-up to strategic decisions'

QMV as follow-up to unanimous strategic decisions		
According to Art. 31 (2) TEU, the 'Council shall use QMV', when following up on strategic decision by European Council; Hardly used in practice.		
Criterion	Score	Argumentation
Timeliness*	Minor increase Minor decrease	QMV in the Council increases of timeliness; unanimity and deliberations in European Council might become more difficult and decrease timeliness though.
		Same across all three policy areas.
Efficacy	Minor increase	Efficacy through national and EU means will be the same; will increase because despite disagreement EU means can be used to implement
		Matters for adoption of human rights positions and sanctions; lesser impact on civilian CSDP missions
External Recognition	Minor increase	Minor increase due to strategic directions given European Council, which are then implemented if majority of member states agrees.
		Matters especially for human rights positions and sanctions where timing and speed matters; lesser impact on civilian CSDP missions;
Input Legitimacy	No Impact	No impact on direct political participation of citizens or national/European parliaments
		Same across all three policy areas.
Throughput Legitimacy	No impact Minor increase	No impact on transparency; would increase likelihood of accountability of European Council, but not of Council
		More likely to have effect in adoption of sanctions and human rights positions; national salience and likelihood for accountability dynamics less likely when it comes to civilian CSDP missions;
Identification of member states as EU collective	Minor increase	Increased identification as disagreement on best route for implementation is given room and is respected; CFSP as platform to manage different opinions in respectful manner.
		Same across all three policy areas.
Avoidance of undue external influence	No impact	No impact as might simply shift third party attempt from head of state to foreign minister;
		Same across all three policy areas.

\* Note: Timeliness is split in two scores to highlight that it improves timeliness in the Council but leads to a decrease of timeliness on European Council level. There are two scores for throughput legitimacy, because the likelihood of accountability increases of the European Council, but not of the Council.

A minor increase of **efficacy** is likely with the use of QMV as follow-up to unanimous strategic decisions. In this case the efficacy through national and EU means will be the same, as all member states are bound by the decision and need to implement also through national means (or at least not do anything that goes against). It will increase the efficacy, because even if not all member states agree in the implementation phase in the Council and thus implement less willingly, also EU means



can be used to implement. That matters especially for the adoption of human rights positions and sanctions, where the implementation through EU actors and instruments is decisive (i.e. when the HR/VP makes a statement on behalf of the EU). The difference to constructive abstention in this case is that for sanctions the outvoted member state would still need to implement. This would politically constitute a major break with the past<sup>135</sup>, but legally the opposing member state(s) would still be obliged to implement EU law, i.e. in this case the sanctioning decision. If they refuse or do not implement, they can be taken to court. A lesser impact on civilian CSDP missions is expected, as in this case contributions by member states matter more strongly for the actual implementation.

The **external recognition** of the EU as strategic partner is going to increase, as the European Council now provides clear strategies, which are then implemented swiftly if majority of member states agrees. Again this matters especially for the adoption of human rights positions and sanctions, where timing and speed matters, but it will have a lesser impact on civilian CSDP missions.

No impact on **input legitimacy** and thus the direct political participation of citizens or national or European parliaments is to be expected with the use of QMV to implement unanimous strategic decisions. For **throughput legitimacy** the assessment is more mixed. While there is no impact on transparency, major decisions by heads of states and government in the European Council might gain more attention in national discourses and lead to higher national parliamentary accountability of European Council decisions, especially if the same member state is then going to oppose an implementing decision and be overruled in the Council. It would increase accountability of European Council, but not of Council. The likelihood for an increased accountability through national discourses is more likely to have an effect in the adoption of sanctions and human rights positions, whereas national salience and likelihood for accountability dynamics are less likely when it comes to civilian CSDP missions.

The use of QMV to implement unanimous strategic decisions is likely to increase the **identification of member states as EU collective**, even if it sounds counterintuitive at first. The EU as a collective identified a common goal by unanimity in the European Council, but disagreement about best course of implementation can be debated openly and disagreed upon through the use of QMV in the Council. This offers a more honest deliberation venue, where disagreement is respected and accepted without holding EU action up. In this regard, it is important to remember that the CFSP was partly created to help member states manage their differences, challenging the idea that their interests must converge if EU foreign and security policy cooperation is to work. It thus plays a vital role in containing lack of convergence and managing divergence<sup>136</sup>. The CFSP thus gives room for these necessary deliberations and disagreements of how best to achieve a set goal, and by doing so it is going to increase the identification of member states with the collective.

The use of QMV as follow-up to unanimous strategic decisions taken on European Council level is likely to have no impact on the **avoidance of undue external influence**. It might shift the attempt of third parties to influence the European Council rather than the Council, but as head of state/government and foreign minister are from same government, it is not going to make a huge difference. One could argue that third parties then only need to focus on the one big decision in the European Council instead of several decisions to be taken on the Council level, but the attention and scrutinization of these big decisions is going to be much higher, what in turn will make it more difficult for third parties to exercise undue external influence.

<sup>135</sup> Interview with Member state, April 2023: directives to implement sanctions have so far always been adopted by consensus to avoid a negative effect on EU territory.

<sup>136</sup> Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) *ibid.*, p. 386.

### 5.1.4. Luxembourg compromise

The next policy option to assess is the **Luxembourg compromise** as brake clause as remedy to an increased use of QMV in the CFSP (see Table 16).

Table 16: Assessment of policy option 'Luxembourg Compromise' (Brake Clause)

Luxembourg Compromise (Brake Clause)		
This old compromise from the 1960s allows the Member State concerned, based on Article 31(2) TEU, to oppose the adoption of a CFSP decision to be taken by QMV if that act would go against its 'vital and stated' national interests. It is considered a remedy for using more QMV in the CFSP.		
Criterion	Score	Argumentation
Timeliness	Minor increase	Minor increase because member states can't just veto but must justify their opposition. If justification does not convince others, they can go ahead with QMV.
		Has a stronger effect on adoption of human rights positions or sanctions, as these are likely to be more time-sensitive than the adoption of civilian CSDP missions
Efficacy	Minor increase	Efficacy increases because in most cases EU can decide by QMV and use both national and EU means for implementation. Only in salient cases and where members have sound justification, brake clause applies.
		Same across all three policy areas.
External Recognition	Minor increase	Increases because only in extreme cases delay. Signals balance between the consideration of diverging voices and efficient policy-making process.
		Same across all three policy areas.
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments
		Same across all three policy areas.
Throughput Legitimacy	No impact	Transparency and accountability remain unchanged. Opportunity for more transparency if opposing member states declare reasoning publicly; Indirect opportunity for increased national accountability, if they put forward national interest claim (or not), in case there is national political attention. But no direct likely impact on accountability.
		Same across all three policy areas.
Identification of member states as EU collective	Minor increase	Identification as collective increases due to need for justification. Showcases 'care' for others and 'whole of EU'.
		Same across all three policy areas.
Avoidance of undue external influence	Minor increase	The need to justify one's opposition due to vital national interests also means that one can not only veto a decision due to undue external influence. If other member states are not convinced by the justification given or they indeed suspect undue external influence, they can go ahead with QMV. This decreases the risk of undue external influence.
		Same across all three policy areas.

Compared to the status quo and the continued use of unanimity, the use of QMV even with this brake clause is going to increase the **timeliness** of CFSP decisions, simply because member states cannot just veto but have to justify why the decision goes against their vital or stated national interests. It needs to be remembered here that the Luxembourg compromise has been a 'gentlemen's agreement' and as such it is expected that a member state only uses it in case of severe national concerns. The justification needs to be accepted by member states, as otherwise they can go ahead. When the concerned member state then vetos, we are not talking about the policy option of the Luxembourg compromise but would return firmly to the current decision-making mode of unanimity. If we compare the Luxembourg compromise against the use of QMV in the CFSP without this remedy, the brake clause is going to decrease the timeliness of some deliberations, but overall the impact is likely to be null. When considering the three selected policy areas, the Luxembourg compromise has a stronger effect when it is about the adoption of human rights positions or sanctions, as these are likely to be more time-sensitive than the adoption of civilian CSDP missions.

Also **efficacy** is likely to increase with the use of the brake clause in combination with QMV. The Luxembourg compromise ensures that member states only consider a veto in cases of high salience, where they have a sound justification for their opposition. This also entails that in all other cases the EU can decide by QMV and thus be more efficacious by using both national and EU means to implement. The type of policy area is having no effect on efficacy.

The use of the Luxembourg compromise in combination with more QMV in the CFSP is also likely to increase the **external recognition** of the EU, because only on issues with high salience and sound justification the EU is going to take longer to make decisions. To third parties this is signalling the finding of a good balance between the consideration of diverging voices while still ensuring an efficient policy-making process. Again no difference between the three selected policy areas is to be expected.

There is no likely impact on **input legitimacy** with the use of the Luxembourg compromise in combination with more QMV in the CFSP, as it is not going to affect the direct political participation of citizens or national/European parliaments. Also **throughput legitimacy** with transparency and accountability will remain unchanged. The impact on transparency depends on how openly opposing member states are willing to put forward their reservations in the public discourse and beyond the secluded arena of Council negotiations. The need to justify one's opposition due to vital national interests or the lack thereof might provide some more possibility for national parliaments and national discourses to hold their government to account. However, this highly depends on the likelihood that the issue raises attention in the national arena. There is therefore no direct likely impact on accountability.

The **identification of member states as EU collective** is likely to increase. The need to justify one's opposition due to vital national interests strengthens the procedural norm to explain to others why one has a problem with an EU decision to be taken. This also strengthens the identification of EU member states as collective, as it showcases that one also cares about the 'collective good'.

The **avoidance of undue external influence** is also likely to increase with the use of the Luxembourg compromise, because the need to justify one's opposition due to vital national interests also means that one can not only veto a decision due to undue external influence. If other member states are not convinced by the justification given or they indeed suspect undue external influence, they can go ahead with QMV. This decreases the risk of undue external influence. There is no discernible difference to be assumed between policy areas.

### 5.1.5. Increased use of differentiated integration

The **increased use of differentiated integration** (see Table 17) is going to increase the **timeliness** of EU decisions, because not everyone needs to be convinced and a majority of member states can move ahead more quickly. Yet, it is only going to be a minor increase, as the process towards getting to the differentiated integration framework is also going to use some time.

Table 17: Assessment of policy option 'differentiated integration'

Increased use of differentiated integration		
Enhanced cooperation (CFSP); Permanent structured cooperation (CSDP); Informal differentiated integration through regional groupings, contact and lead groups, flexible international cooperation;		
Criterion	Score	Argumentation
Timeliness	Minor increase	Increases timeliness because not everyone needs to be convinced
		Same across all three policy areas.
Efficacy	Minor increase	No impact
		Increases efficacy for national means of participating member states, but no impact on efficacy through EU means, as the latter cannot be used for differentiated integration.
		Increased efficacy for civilian CSDP missions, but limited efficacy for human rights positions or sanctions, as then only implemented by participating member states.
External Recognition	Major decrease	Majorly decreased external recognition of the EU as an autonomous entity next to EU member states; EU as platform for intergovernmental cooperation when it suits, rather than a fully-fledged international actor.
		Major decrease in human rights positions; For the adoption of sanctions, differentiated integration is not possible without harming the reputation of the common market. Less negative influence likely on the provision of civilian CSDP missions.
Input Legitimacy	No impact	No direct impact on direct political participation of citizens or national/European parliaments
		Same across all three policy areas.
Throughput Legitimacy	No impact	No direct impact on transparency or accountability
		Same across all three policy areas.
Identification of member states as EU collective	Minor decrease	Minor decrease due to prioritisation of own added value vis-à-vis wholesome benefit/costs for the EU as international actor.
		Negative effect more likely to be strong in adoption of human rights positions and adoption of sanctions; less strong in civilian CSDP missions;
Avoidance of undue external influence	Major increase	The risk of undue external influence majorly decreases, if member states can go ahead without vetoing state.
		Effect more likely to be positive in adoption of human rights positions and adoption of sanctions; less strong in civilian CSDP missions.

\* Note: For Efficacy there are two scores: 'efficacy through national means' and 'efficacy through EU means'.

The increased use of differentiated integration is also likely to increase the **efficacy** for national means of participating member states, but there is no going to be any impact on efficacy through EU means, as EU means cannot be used for differentiated integration. When considering the three selected policy areas, we expect an increased efficacy for civilian CSDP missions, where participating member states are going to use their national resources proactively. There is going to be limited efficacy for human rights positions or sanctions, as the latter are then only implemented by participating member states and do not involve implementation through EU means and EU instruments. Here we assume that it makes diplomatically a major difference if a statement is put forward by the whole of the EU or just a subgroup of its member states.

The assessment of the impact of differentiated integration on the **external recognition** depends very much on the extent to which stakeholders differentiate between groups of EU member states and the EU as a whole or not. Differentiated integration is for sure going to decrease the external recognition of the EU as an autonomous entity next to EU member states, and it might leave the impression of the EU rather being a platform for intergovernmental cooperation when it suits than a fully-fledged international actor. This negative impact highly depends, if most member states are part of the differentiated integration (like in PESCO) or if indeed only the necessary minimum of participating member states decides to join. Yet, the sovereign debt crisis showcased how difficult it is to clearly communicate the intricacies of EU policy-making, when not the full institutional framework can be used, as was the case with the Eurozone. When considering the three selected policy areas, we expect a major decrease of external recognition in the area of human rights positions. For the adoption of sanctions, differentiated integration is not possible without harming the integrity of the common market (for economic sanctions) or of the Schengen area (for travel bans). Less strong is the negative influence of differentiated integration likely on civilian CSDP missions.

Differentiated integration is neither influencing **input legitimacy**, i.e. the impact on direct political participation of citizens or national/European parliaments nor on **throughput legitimacy**, i.e. transparency or accountability. While participating member states much more clearly communicate their policy preference by joining the differentiated integration framework, nothing improves in how the national governments of participating member states can be held to account, especially as differentiated integration works in a fully intergovernmental mode.

Differentiated integration is likely to decrease the **identification of member states as EU collective**, as in this situation it is more about seeing the own added value in cooperating with like-minded member states rather than considering the benefit/costs for the EU as whole. The effect is likely to be minor and not major, because at least the decision to join a differentiated integration initiative forces member states to proactively consider if they want to be part of this EU initiative or not. If they decide to be part, they are likely to be more actively involved. When considering the three selected policy areas, the negative effect is going to be stronger in the adoption of human rights positions and of sanctions and less strong when it is about civilian CSDP missions.

The risk of **undue external influence** is majorly decreased through differentiated integration because member states can go ahead without the state that would like to veto a certain policy development due to external influence. This effect is likely to be more positive in the adoption of human rights positions and sanctions and is less strong in regard of civilian CSDP missions.

### 5.1.6. Progressive activation of passerelle clause

The last policy option within this cluster, the **progressive activation of the passerelle clause** (see Table 18) is possible according to the treaties but has never been activated in the CFSP.

Table 18: Assessment of policy option 'progressive activation of passerelle clause'

Progressive activation of passerelle clause		
European Council decides by unanimity for use of QMV in Council; comes together with Luxembourg compromise as brake clause		
Criterion	Score	Argumentation
Timeliness	Major increase	Major increase in timeliness for Council but also European Council; increase only minor if more (convincing) use of brake clause
		Same across all three policy areas.
Efficacy	Minor increase	Efficacy increases because even if not all member states support the decisions, national and EU means can be used for implementation.
		Especially relevant for adoption of human rights positions and sanctions; lesser impact on civilian CSDP missions
External Recognition	Minor increase	external recognition increases because only in rare situations (convincing justification by MS for brake clause) decision-making will take longer. Signals sound good balance between the consideration of diverging voices and efficient policy-making process.
		Matters especially for adoption of human rights positions and sanctions where timing and speed matters; less impact on civilian CSDP missions;
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments for special passerelle clause. For activation of general passerelle clause involvement of national parliaments.
		Same across all three policy areas.
Throughput Legitimacy	Minor decrease	Minor decrease of accountability, especially for citizens of outvoted member states. In other areas counter-balanced through EP involvement. No likely impact on transparency.
		Accountability decreases particularly in human rights and sanctions adoption. This effect is no concern for civilian CSDP missions.
Identification of member states as EU collective	Minor decrease	Outvoted member states might feel not part of the club – depends on dynamics though; it makes EU less inclusive of diverging voices;
		Effect more negative in human rights positions and adoption of sanctions, as these need to be implemented by everyone. (i.e. if HR/VP makes statement on behalf of the EU even if country X was against).
Avoidance of undue external influence	Minor increase	Member states cannot veto a decision due to undue external influence only. This decreases the risk of undue external influence.
		Same across all three policy areas.

The **progressive activation of the passerelle clause** is likely to lead to a major increase of **timeliness** of decisions by the Council but also European Council because the European Council only needs to decide once and does - in comparison to the policy option where QMV is used as follow-up to unanimous strategic decisions - not have to decide time and again. The use of QMV in the Council is going to positively affect the timeliness of decisions, also because we know from the negotiation literature that member states are more likely to adopt more flexible negotiation

strategies right from the start<sup>137</sup>, if there is the possibility that they might be outvoted. It is also going to allow more flexible decision-making towards changing contexts. The increase might only be minor, if member states use the Luxembourg compromise convincingly and thus avoid QMV. No differentiation between the three policy areas is likely.

The use of QMV after the activation of the passerelle clause is going to increase the **efficacy** through both national and EU means. All member states are then bound by the decision and need to implement also through national means (or at least not do anything that goes against). It will increase the efficacy, because even if not all member states agree in the implementation phase in the Council, EU means can be used to implement. The latter matters especially for the adoption of human rights positions and sanctions, where then all member states will need to implement once the sanction decision becomes EU law. Should member states who have been outvoted not implement, they breach their implementation requirements. It will have a lesser impact on civilian CSDP missions, as there the active contributions by member states matter more strongly. However, the efficacy through national means is not a given and therefore only a minor increase is likely (although a major increase is not impossible). The reason is that it makes a difference if member states let the EU implement without voicing contestation, or if they also proactively support a taken decision. Only in the latter case a major increase of efficacy is likely, but that is only going to be achieved, if member states feel ownership of taken decisions and that their voices and concerns have been heard.

Like efficacy, the **external recognition** of the EU is likely to increase with the use of QMV after the activation of the passerelle clause, because only in issues of high salience and sound justification the EU is going to take longer now to make decisions. To third parties this might signal the finding of a good balance between the consideration of diverging voices but still ensuring an efficient policy-making process. A minor increase is likely, while a major increase might be possible, if member states still feel that the taken decisions considered their voices, so that they take full ownership in also representing the taken decision proactively in international politics. The increase of external recognition through QMV is going to matter especially for the adoption of human rights positions and sanctions where timing and speed matters. A lesser impact is to be expected on civilian CSDP missions.

The use of QMV after the activation of the passerelle clause is not going to have an impact in **input legitimacy** and on the direct political participation of citizens or national/European parliaments.

The progressive activation of the passerelle clause to use QMV in the Council is going to trigger a minor decrease of **throughput accountability**. While no impact on transparency is likely, accountability mechanisms will be decreased, particularly for citizens of those member states that were outvoted. This will however only be a minor negative impact, as beforehand the European Council decided to grant the possibility for voting by QMV by unanimity. Within other policy areas where QMV is used, this is counterbalanced by accountability mechanisms through European Parliament involvement, but this would not be the case in the CFSP. The issue is that citizens have no opportunity to hold someone accountable for any negative impact that they have from the taken decision. However, as it is the same government that on the European council level can use a veto to reject the activation of the passerelle clause, the impact on throughput accountability is minor and not major.

The **decrease of accountability is going to be particularly stark in the adoption of human rights positions and sanctions**. If the targeted third party is retaliating, it is likely to have negative

<sup>137</sup> Pruitt, D. (2002). Strategy in Negotiation. *ibid.*

consequences for all EU citizens, also for those citizens, whose governments have been outvoted. Imagine for example that country X is against a strong human right statement against Y but is outvoted and the EU goes ahead anyway. In retaliation country Y decides to impose severe sanctions that have a major negative impact on the economy of country X. The issue is then that citizens of country X can't hold their government accountable, as the latter has not agreed to the decision in Council level but had previously agreed to be able to be outvoted at European Council level. But they can also not hold anyone else in the EU accountable. This effect is likely to be starker for sanctions than for human rights positions where the reaction is mostly not so severe. This effect is no concern for the adoption of civilian CSDP missions.

The **identification of member states as EU collective** is likely to slightly decrease with the use of QMV after the activation of the passerelle clause, but the assessment depends on overall dynamics. If it is mostly the same member state(s) that is outvoted, it/they might not feel part of the EU anymore. The exact impact also depends on the ability of the Council to still manage to be inclusive of and consider the arguments of diverging voices despite the use of QMV. The decreasing effect is more likely in the field of human rights positions and sanctions, as both need to be implemented by everyone, for example, when the HR/VP makes statement on behalf of the EU even if country X was against.

The possibility to outvote member states without sound justification why this decision harms their vital national interests, means that member states cannot veto a decision due to **undue external influence** only. If other member states are not convinced by the justification given or they indeed suspect undue external influence, they can go ahead with QMV. This decreases the risk of undue external influence.

### 5.1.7. Conclusion

After the assessment of each policy option in turn, Table 19 provides an overview of the scores across all seven core criteria for the existing decision-making options within the CFSP. It shows that none of the policy options of this cluster is influencing input legitimacy. Next to the status quo (i.e. unanimity) all existing options score mostly positively, except for the major decreasing effect of differentiated integration on external recognition and the use of QMV after the activation of the passerelle clause on accountability as part of throughout legitimacy. The identification of member states as EU collective is also slightly decreasing through differentiated integration and the use of QMV after the activation of the passerelle clause.

The overview shows that the option of the Luxembourg compromise as brake clause would lead most often to an increase across the criteria. Similar results show for the increased use of constructive abstention, QMV as follow-up to unanimous strategic decisions and the progressive activation of the passerelle clause. The increased use of differentiated integration would positively impact the avoidance of undue external influence, timeliness and efficacy, but is leading also to negative impact on external recognition and the identification of member states as collective. The continued use of unanimity is likely to lead to a minor decrease across most criteria.

When looking at the criteria of impact of the policy options on the criteria according to the two dimensions, it shows that the assessed policy options are expected to have a **more positive impact on the actorness dimension** than on the democracy dimension. If we focus on the criteria on the actorness dimension only, the progressive activation of the passerelle clause impacts the criteria of the actorness dimension most positively by leading to a major increase of timeliness and minor increases of efficacy and external recognition. The Luxembourg compromise and the increased use of constructive abstention and QMV as follow-up to unanimous strategic decisions lead to minor increases across all actorness criteria. Differentiated integration would not have an impact, whereas



the continued use of unanimity would lead to a negative effect across the actorness dimension. When looking at the democracy dimension only, it is likely that the increased use of constructive abstention, the Luxembourg compromise or by QMV as follow-up to unanimous strategic decisions lead to minor increases, whereas the progressive activation of the passerelle clause and differentiated integration come with mixed results. The continued use of unanimity would have a minor negative effect across the democracy dimension.

When comparing the impact of the policy options per criteria, it shows that the most positive impact would be on the **avoidance of undue external influence**, the **timeliness** and **efficacy**. All other criteria would have no impact on average (external recognition; input legitimacy or collective identification) or hardly an impact (throughput legitimacy).

Table 19: Assessment of existing decision-making options within CFSP (overview)

Criterion	Actorness-dimension				Democracy-dimension			
	Timeliness	Efficacy		External Recognition	Input Legitimacy	Throughput Legitimacy	Identification of member states as EU collective	Avoidance of undue external influence
<b>Unanimity</b> Art. 31(1) TEU	Minor decrease	No impact *	Minor dec.*	Minor decrease	No impact	No impact	Minor decrease	Minor decrease
<b>Constructive Abstention</b> Art. 31(1), 2nd paragraph TEU	Minor increase	No impact *	Minor inc.*	No impact	No impact	No impact	Minor increase	Minor increase
<b>QMV as follow-up to unanimous strategic decisions -</b> Art. 31(2) TEU	Minor inc. <sup>+</sup>	Minor dec. <sup>+</sup>	Minor increase	Minor increase	No impact	No impact <sup>+</sup>	Minor inc. <sup>+</sup>	Minor increase
<b>'Luxembourg Compromise' aka 'Brake Clause'</b>	Minor increase	Minor increase		Minor increase	No impact	No impact	Minor increase	Minor increase
<b>Differentiated Integration</b> Art. 20, Art. 42(6), Art. 47 TEU	Minor increase	Minor inc.*	No impact *	Major decrease	No impact	No impact	Minor decrease	Major increase
<b>Progressive Activation of Passerelle Clause</b> Art. 48(7) and Art. 31(3) TEU	Major increase	Minor increase		Minor increase	No impact	Minor decrease	Minor decrease	Minor increase

\* Note: For these policy options efficacy is split between 'efficacy through national means' and 'efficacy through EU means'.

+ Note: For the policy option 'QMV as follow-up to unanimous strategic decisions' timeliness is split in two scores to highlight that it improves timeliness in the Council but leads to a decrease of timeliness on European Council level. There are two scores for throughput legitimacy, because the likelihood of accountability increases of the European Council, but not of the Council.

## 5.2. Assessment of decision-making options with treaty change but within transgovernmentalism

In this next chapter we are going to assess the decision-making options that would need treaty change but remain within the existing transgovernmental policy-mode, i.e. we adapt the interaction of involved actors, but do not change the focus on member states as decision-makers (see chapter 3.2 for details).

One of these eight policy options under scrutiny here (QVM in selected CFSP areas) already exists today in other policy areas, whereas QMV to activate passerelle clauses would require treaty change, where its effect can be deducted from previous experiences with QMV. The other six assessed policy modes are variations on existing decision-mechanisms in the CFSP (adjusted constructive abstention, reinforced enhanced cooperation, enhanced QMV, Super-QMV, flexible opt-in / opt-out system, reverse decision-making; see chapter 3.3 for more detailed descriptions). They are not used in the proposed form yet in the EU, but through their tweaks they would tackle specific shortcomings of the existing CFSP decision-making system. They would all require treaty change but stay firmly within the transgovernmental mode of EU policy-making, where member states are the main decision-makers. The difference between them emerges through how member states make decisions between themselves and through a variation if the made decision is only applying to those in favour of the decision or to everyone. We are again first going to assess and discuss each policy option according to the seven criteria in turn, before offering a comparative overview.

### 5.2.1. Adjusted constructive abstention

The first policy option under assessment is **adjusted constructive abstention** (see Table 20), which is a policy-making mode that is not in use in this form yet but picks up on the experience with constructive abstention in the CFSP. The proposition is that member states can be requested to constructively abstain, if they do not manage to convince the other member states of the justification they give for their reservations about the proposed policy. The policy option is by and large quite similar to the current use of 'constructive abstention' (see Table 14) but it formalises the socialised norm in the Council of providing justification for one's opposition<sup>138</sup>.

Table 20: Assessment of policy option 'Adjusted constructive abstention'

Adjusted constructive abstention		
Adjust the procedure for constructive abstention by which a % of member states [to be defined] can request/oblige member state to use constructive abstention		
Criterion	Score	Argumentation
Timeliness	Minor increase	Minor increase of timeliness due to more compromise-seeking negotiation dynamics; takes more time than QMV
		Same across all three policy areas
Efficacy*	No impact Minor increase	No impact on efficacy through national means, as abstaining member states do not need to implement. More decisive and efficacious EU through EU means and thus minor increase.
		Minor increase of efficacy for human rights positions; No impact on civilian CSDP missions; For sanctions effect similar to use of QMV

<sup>138</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), ibid.

Adjusted constructive abstention		
Adjust the procedure for constructive abstention by which a % of member states [to be defined] can request/oblige member state to use constructive abstention		
Criterion	Score	Argumentation
External Recognition	Minor increase	EU recognised as more decisive and reliable actor, but also as a democratic and accountable system that engages with contesting voices, what also increases recognition of EU as autonomous actor.
		Same across all three policy areas
Input Legitimacy	No impact	No impact on input legitimacy
		Same across all three policy areas
Throughput Legitimacy	Minor increase	Accountability (and ev. transparency) increases because member state must justify towards other member states but also towards their citizens
		Towards other member states same across all three policy areas. For sanctions more likely that becomes issue of national public attention. Less likely for genuine human rights adoptions or civilian CSDP missions, as the impact of the latter on national public less direct.
Identification of member states as EU collective	Major increase	Counter-intuitive as contesting member state might be overruled; But formalisation of providing convincing justification signals strong appreciation of collective framework
		Same across all three policy areas
Avoidance of undue external influence	Major increase	Major increase of avoidance of undue external influence, as member states need to provide reasons for opposition
		Same across all three policy areas

\* Note: For Efficacy there are two scores: 'efficacy through national means' and 'efficacy through EU means'.

For assessing the impact of adjusted constructive abstention on **timeliness**, we need to consider that this policy option would not be as quick as the possibility to overrule member states as in the application of QMV, but it would still harness the positive impact of not having the threat of the veto per se. Evidence from Council negotiations showed<sup>139</sup> that the latter leads member states to adopt a less stringent negotiation strategy, which makes negotiation dynamics generally more compromise-seeking. It is therefore likely to assume a minor increase of timeliness, even if the back and forth of member states is going to take more time than the application of QMV. Reducing the possibility of single member states to veto without a sound justification, also would increase the ability of EU decisions to adapt more flexibly towards changing contexts. No difference in timeliness between the three selected policy areas is to be expected.

The increased use of adjusted constructive abstention is going to have a mixed impact on **EU efficacy**, in a very similar manner as the use of constructive abstention in its current form. As those member states that abstain do not need to implement, it is unlikely that efficacy through national means is going to increase. The move from unanimity to an adjusted use of constructive abstention might make the EU though more decisive and efficacious through its EU means. Because single member states can now not veto anymore the use of EU means even if they do not actively

<sup>139</sup> Juncos, A. & Pomorska, K. (2006). *ibid*; Pruitt, D. (2002). *Strategy in Negotiation*. *ibid*.

implement themselves, this would lead to a minor increase of efficacy. The latter dynamic would be relevant for the adoption of human rights positions and sanctions, where the EU is going to be able to pursue a more sustainable and long-term approach in defending core values and where implementation is done through EU-level actors and instruments, if the member state in question cannot provide sound arguments why these sanctions or human rights adoption would harm their national interest. No impact is likely in the case of civilian CSDP missions, as here active contributions from member states are key for implementation. In regard of the adoption of sanctions, the use of the adjusted constructive abstention is trickier, as any EU implementation of a sanction regime needs to automatically include the contesting member state as well, to not harm the common market or the Schengen visa regime. This means that the use of the adjusted form of constructive abstention for sanctions would have the same effect as the use of QMV. It needs to be considered here then too that even today member states adopt the legal instruments that follow CFSP decisions for sanctions rather by consensus than by QMV<sup>140</sup>.

The increased use of adjusted constructive abstention is likely to lead to a minor increase of **external recognition**. In this regard this adjusted form differs from the current use of constructive abstention, which is unlikely to impact the external recognition. The EU is going to be recognised as a more decisive and reliable actor, but at the same time the mechanism of listening to contesting voices if a convincing argument is put forward strengthens its perception as a democratic and accountable system. The latter also increases the perception of the EU as an autonomous actor that is more than just the sum of its member states. No difference between the three selected policy areas is assumed.

No direct impact on **input legitimacy** using adjusted constructive abstention is likely. Only in cases where the justification for constructive abstentions of member states would be made a topic in national parliaments, we would assume an increase of input legitimacy. But as this has not been the case in instances where constructive abstention has been used, it is likely not to have an impact. The use of adjusted constructive abstention has the potential though to increase accountability and transparency and therefore increase **throughput legitimacy**, because the abstaining member state can be held accountable by its fellow member states. Furthermore, it is likely that the justification of a member state for constructive abstention – especially if it is overruled by others – is going to become a topic of national scrutiny and public discourse. If the government of the contesting/abstaining member state does so publicly through a press conference, a statement or through debate in the national parliament, also transparency can increase, but it is not a given. The increase in accountability towards other member states is likely to be the same across all three policy areas. Accountability towards the national public is more likely in terms of sanctions, as sanction decisions might have a more direct effect on the national public and gain therefore more attention than human rights adoptions or civilian CSDP missions.

The increased use of adjusted constructive abstention is going to lead to a major increase of **identification of member states as EU collective**. If the jointly agreed procedural norm of providing convincing justification is formalised with the use of adjusted constructive abstention, it strongly signals the value that all member states attach to the collective framework. This might seem counter-intuitive at first, as in such a situation a contesting member state or a group of member states might be overruled and forced to constructively abstain. But the general acceptance of this mechanism strongly signals that the collective framework is important to member states and that they therefore established a mechanism that ensures respect towards the others and the collective

<sup>140</sup> Interview with member state, April 2023: directives to implement sanctions have so far always been adopted by consensus to avoid a negative effect on EU territory.

through the need for justifying one's opposition. No variation across the three selected policy areas is to be expected.

Adjusted constructive abstention is going to decrease the risk of **undue external influence**, because member states are urged to provide reasons for their opposition that needs to be beyond arguments that come from undue external influence. If the others are not convinced by the reasoning and expect undue external influence, they can request the member state in question to constructively abstain. This would be different from the current use of constructive abstention where the other member states might still detect undue external influence in the reasoning of an opposing member state but are not in the position to force this member in question not to block the moving forward of an EU decision. Again, no differences between the three policy areas are to be expected.

### 5.2.2. Reinforced enhanced cooperation

The next policy option for assessment is **reinforced enhanced cooperation** (see Table 21). This policy option would be a further development of the existing form of differentiated integration (see Table 17). In this reinforced type of enhanced cooperation, a non-participating member states does not have to implement the decisions taken within the enhanced cooperation framework nationally, but the EU is going to fully implement enhanced cooperation objectives, including any budgetary and legal implications, if more than 2/3 of member states joined the enhanced cooperation framework. The majority of member states now has a mean to move forward, even if a member state vetos a certain decision. It is unlikely that member states will do so if the member state in question provides sound justification for their opposition. But if the opposing member state(s) do(es) not manage to convince the others, the policy option of reinforced enhanced cooperation would lead to the same result as the use of adjusted constructive abstention described above.

Table 21: Assessment of policy option 'Reinforced enhanced cooperation'

Reinforced enhanced cooperation		
Member states not participating in enhanced cooperation do not have to implement nationally, but EU is going to fully implement enhanced cooperation objective, including budgetary and legal implications, if more than 2/3 of member states joined enhanced cooperation		
Criterion	Score	Argumentation
Timeliness	Minor increase	Timeliness increases because majority of member states can move forward in enhanced cooperation framework.
		Same across all three policy areas
Efficacy	Minor increase	Participating member states more likely to actively implement what increases efficacy through national means; most different to current use of enhanced cooperation is increase of efficacy through EU means.
		Same across all three policy areas
External Recognition	Minor decrease	Decreased external recognition due to 'opt-out' of non-participating member states; yet decrease is only minor due to implementation through EU means
		Minor decrease in human rights positions; Adoption of sanctions problematic for EU integrity and effectiveness of sanction regime; less negative impact expected for civilian CSDP missions.

Reinforced enhanced cooperation		
Member states not participating in enhanced cooperation do not have to implement nationally, but EU is going to fully implement enhanced cooperation objective, including budgetary and legal implications, if more than 2/3 of member states joined enhanced cooperation		
Criterion	Score	Argumentation
Input Legitimacy	No impact	No direct impact on political participation of citizens or national/European parliaments
		Same across all three policy areas
Throughput Legitimacy	No impact	No direct impact on transparency or accountability
		Same across all three policy areas
Identification of member states as EU collective	Minor decrease	Minor decrease due to non-participating member states, but effect might depend on how strongly those non-participating member states voice their positions internationally.
		Negative effect more likely to be strong in adoption of human rights positions; less strong in civilian CSDP missions; For sanctions strong negative effect;
Avoidance of undue external influence	Major increase	Major decreased because member states can go ahead without the state that would like to veto due to external influence
		Stronger in the adoption of human rights positions and less strong in regard of civilian CSDP missions

Such a reinforced enhanced cooperation mechanism would increase the **timeliness** of EU decisions, as member states would still listen to diverging views but have a mean to move forward if they consider the justifications given as not convincing. Single member states would not be able to block decisions and would not have to implement, but if two thirds of member states join the enhanced cooperation framework, decisions can be taken on behalf of the EU.

This possibility that enhanced cooperation decisions supported by at least 2/3 of member states can also be implemented on behalf of the EU is the most important difference in terms of **efficacy** between the current use of enhanced cooperation and this proposed reinforced enhanced cooperation. Already now enhanced cooperation makes it more likely that participating member states get engaged more proactively in the implementation which increases the efficacy through national means. But the big difference in the reinforced form of enhanced cooperation is that also the efficacy through EU means (i.e. budget lines but also EU actors can politically promote and implement the decision) increases, if 2/3 of member states support the decision. No discernible differences between the three policy areas are expected.

This reinforced form of enhanced cooperation is still likely to decrease the **external recognition** of the EU, as the taken decision is not applicable to member states opting-out of the enhanced cooperation framework, which decreases the unitary perception of the EU. In comparison to enhanced cooperation, however, which majorly decreases the external recognition of the EU as an autonomous unit next to member states, the reinforced manner of enhanced cooperation still carries the EU flag strongly in its implementation. It is therefore likely to assume a minor decrease in external recognition, as 2/3 of member states plus EU actors are going to be perceived of sharing the taken position, but that will still leave the impression that it is not a decision fully supported by the whole of the EU.

When considering the three selected policy areas, we expect a minor decrease of external recognition in the area of human rights positions. For the adoption of sanctions, differentiated integration is not possible without harming the integrity of the EU (its common market, its common visa regime etc) or the effectiveness of the sanction regime. Less strong is the negative influence of reinforced enhanced cooperation likely to be on civilian CSDP missions.

Reinforced enhanced cooperation is neither having an effect on **input legitimacy**, i.e. the impact on direct political participation of citizens or national/European parliaments nor on **throughput legitimacy**, i.e. transparency or accountability. Differentiated integration frameworks remain purely intergovernmental and therefore also do not introduce any means that would increase input or throughput legitimacy.

Reinforced enhanced cooperation is likely to decrease the **identification of member states as EU collective**, but its effect is very much going to depend on the number of opt-outs/opt-ins and the dynamics leading to them. The experience from the existing opt-outs in the realm of Justice and Home Affairs (Denmark and Ireland) or also the now reversed optout from CSDP by Denmark<sup>141</sup> showcase that effect might be minor or even lead to the reverse effect that the non-participating member state very closely observes developments and is much more engaged with assessing the impact on national policies.<sup>142</sup> However, not all opt-outs work so smoothly as the Eurozone and its differentiation between Euro-members and non-Euro-members shows<sup>143</sup>. Also in this form of enhanced cooperation member states are nudged to proactively reflect on the added value of collective policy-making versus remaining outside of such a framework, is likely to have a positive effect on their identification as EU member states.

When considering the three selected policy areas, the negative effect is going to be stronger in the adoption of human rights positions, where the EU then represents the EU position adopted by at least 2/3 of member states, without the non-participating member state having agreed. The effect is expected to be less strong about civilian CSDP missions, as here the possible negative effect on the non-participating member states is likely to be minor. For sanctions there is going to be a strong negative effect, as sanctions regime will be in force and also have effect on the territory of the non-participating member state. So either non-participating member state does not implement (what harms EU integrity), or the non-participating member state is forced to implement despite opposition (which leads to same effect as being outvoted through QMV).

The risk of **undue external influence** is majorly decreased through differentiated integration because member states can go ahead without the state that would like to veto a certain policy development due to external influence. This effect is likely to be more positive in the adoption of human rights positions and is less strong in regard of civilian CSDP missions, where undue external influence against a CSDP mission is likely.

### 5.2.3. QMV in selected areas

The move from unanimity to **QMV in selected areas** of the CSFP is often portrayed as the panacea for more effective EU international actorness. It would alter the negotiation dynamics and avoid blocking vetos but would still preserve the integrity of the EU to implement in a unitary manner.

<sup>141</sup> Euractiv (2022). [Denmark expected to join EU defence cooperation within month](#). 3 June 2022.

<sup>142</sup> Adler-Nissen, R. (2014). [Opting Out of the European Union: Diplomacy, Sovereignty and European Integration](#). Cambridge University Press.

<sup>143</sup> Schimmelfennig, F. & Winzen, T. (2023). [Cascading Opt-Outs?](#) The Effect of the Euro and Migration Crises on Differentiated Integration in the European Union. *European Union Politics* 24(1): pp. 21-41.



QMV would be reached when 55% of member states agree upon a proposal that has been supported by the HR/VP, or when 72% of member states agree upon a proposal that has been introduced by (a group of) member states. To **mitigate the effect of QMV the emergency brake clause of Art. 31(2) TEU would be extended to all areas where QMV is used**. In its June 2022 resolution, the European Parliament proposed treaty change to move to QMV in the areas of restrictive measures<sup>144</sup>.

Table 22: Assessment of policy option 'QMV in selected CSFP areas'

QMV in selected CFSP areas		
Approval of 55% of Member States (16 MS) or 72% if the act has not been proposed by the Commission/HR/VP (20 MS) ('reinforced QMV') <sup>145</sup> , which must represent at least 65% of the EU's population. All member states and EU need to implement. <b>Emergency brake of Art. 31(2) TEU is extended to all areas where QMV is used.</b> e.g. EP proposal to amend TEU: use QMV for sanctions		
Criterion	Score	Argumentation
Timeliness	Minor increase	QMV in Council increases timeliness, even if few member states disapprove; Consensus-seeking attitude likely to prevail
		Same across all policy areas
Efficacy	Minor increase	Efficacy through national and EU means will increase; Minor increase, as implementation by opposing member states likely to be necessary minimum.
		Matters for adoption of human rights positions and sanctions, lesser impact on civilian CSDP missions
External Recognition	Minor increase	Minor increase likely, as stronger recognition of EU as decisive and distinct international actor; also likely to increase EU credibility;
		Matters especially for human rights positions and sanctions where timing and speed matters; lesser impact on civilian CSDP missions;
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments
		Same across all policy areas
Throughput Legitimacy	Major decrease	Major decrease of accountability mechanisms for citizens of outvoted member states
		Same across all policy areas, but national effect more likely to be felt in human rights positions and sanction (as here retaliation more likely)
Identification of member states as EU collective	Major decrease	Major decrease of collective identification through outvoting of several member states; depends on negotiation process
		Less strong in civilian CSDP missions compared to adoption of sanctions and human rights positions

<sup>144</sup> European Parliament (2022). [European Parliament Resolution of 9 June 2022](#), ibid.

<sup>145</sup> <https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>

QMV in selected CFSP areas		
Approval of 55% of Member States (16 MS) or 72% if the act has not been proposed by the Commission/HR/VP (20 MS) ('reinforced QMV') <sup>146</sup> , which must represent at least 65% of the EU's population. All member states and EU need to implement.		
<b>Emergency brake of Art. 31(2) TEU is extended to all areas where QMV is used.</b> e.g. EP proposal to amend TEU: use QMV for sanctions		
Criterion	Score	Argumentation
Avoidance of undue external influence	Major increase	All member states who oppose due to undue external influence can be outvoted (if others know about undue external influence) Same across all three policy areas.

The use of QMV in selected areas is likely to increase **timeliness**, as member states are more willing to adopt a compromise-seeking attitude in situations that they can be outvoted. The effect is probably not going to be major though because from existing negotiation dynamics in other EU areas we know that member states are still likely to aim for consensus over QMV<sup>146</sup> and member states also have the possibility to rely on the Luxembourg compromise as brake clause. As the decision to move to QMV only needs to be taken once during treaty change negotiations, no negative impact in terms of timeliness in the European Council is expected (as is the case when QMV is used as follow-up to strategic decisions, see Table 15).

A minor increase of **efficacy** is likely with the use of QMV as follow-up to unanimous strategic decisions. In this case the efficacy through national and EU means will be the same, as all member states are bound by the decision and need to implement also through national means (or at least not do anything that goes against). It will increase the efficacy, because even if not all member states agree in the implementation phase in the Council and thus implement less forcefully, also EU means can be used to implement. That matters especially for the adoption of human rights positions and sanctions, where the implementation through EU actors and instruments is decisive (i.e. when the HR/VP makes a statement on behalf of the EU). Even if member states did not agree to the sanction regime in place, they will need to implement the sanctions, as otherwise they would breach EU law. A lesser impact on civilian CSDP missions is expected, as in this case contributions by member states matter more strongly for the actual implementation. While some member states might then not proactively support the CSDP missions, it is likely that those member states who voted for it, also ensure the necessary means. The increase of efficacy is considered minor and not major, because national implementation is likely to be close to the necessary minimum, if member states are not convinced by the measures taken.

The **external recognition** of the EU as strategic partner is going to increase, as the EU can take positions and implement them more swiftly and decisively. Again this matters especially for the adoption of human rights positions and sanctions, where timing and speed matters, but it will have a lesser impact on civilian CSDP missions. The impact is likely to be minor, as a too strong and harsh outvoting of some member states might also harm the reputation of the EU as a democratic and inclusive political system. No impact on **input legitimacy** and thus the direct political participation of citizens or national or European parliaments is to be expected with the use of QMV to implement unanimous strategic decisions.

<sup>146</sup> Mattila, M. (2008). [Voting and Coalitions in the Council after the Enlargement](#), *ibid.*

The outlier in the assessment of using QMV in selected areas of CFSP is **throughput legitimacy**, which will majorly decrease. The reason is that citizens of outvoted member states have no possibility to hold any political representative accountable for the taken decision or even more so for any negative consequences that might arise out of the taken decision. Imagine a situation where member state A opposes the sanctions against country X, A is outvoted in the Council, X retaliates with counter-sanctions, and the latter have a major negative impact on the livelihood of citizens of country A. There is no point for citizens of country A to hold their national government accountable, as they were against the sanctions in the first place and were outvoted. Citizens of country A cannot hold other members of the Council accountable, and they also have not parliamentary scrutiny that they could use. A caveat here would of course be the reliance on the Luxembourg compromise, but this is only going to work if the member state in question can convincingly showcase to other member states that their national interest is at stake.

In the areas where QMV is used within the ordinary legislative procedure in the EU, governments can still be outvoted, but citizens then can hold the second tier of the EU legislator, their members of the European Parliament to account. But as we stay within the transgovernmental mode of the CFSP, accountability mechanisms are severely impacted upon the introduction of QMV in the Council. While the decrease of accountability mechanisms is the same across all three policy areas, the national effect is more likely to be felt in the adoption of human rights declarations and going to be even more strong in regard of sanctions, as here it is more likely that the target country is going to retaliate. As civilian CSDP missions are only deployed with the consent of the target country, any negative repercussions are unlikely.

The use of QMV in selected CFSP areas is going to change the negotiation dynamics in the Council, but its impact on the **identification of member states as a collective** is going to depend predominantly on the negotiation processes employed. If the outvoting of single member states remains the exception rather than the rule, it is likely that there is only a very minor decrease of collective identification. But QMV threshold indicated here would allow the outvoting of several member states, what would lead to a major decrease of collective identification, in comparison to the other stricter QMV thresholds identified in the policy options below. It also shows that in other areas QMV is still used only in extreme cases, like it was for example 2015 considered newsworthy that the EU decided by QMV in regard of refugee resettlement and 'forced through'<sup>147</sup> this policy, although QMV has been possible in this policy area for years. But again, like other policy areas member states tended to aim for consensus<sup>148</sup> and it was only after many failed attempts that member states tried to push forward this policy with QMV. However, as the use of QMV does not specify how many member states are outvoted, the impact on the identification of member states as collective is possible and therefore assumed as major, also to indicate a differentiation to the next policy option of 'enhanced QMV'.

Considering the three policy areas it is more likely that the identification of member states as EU collective decreases when adopting human rights positions and even more so when adopting sanctions. For the latter it would mean that opposing member state would need to implement and bear the costs for sanctions that it disagreed with; For human rights adoptions it would mean that the EU promotes a decision on behalf of the whole of the EU, without having considered the opposition of the opposing country. This discrepancy is going to be more publicly and politically visible in these two areas, whereas for civilian CSDP mission it is less likely to have such a strong effect.

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<sup>147</sup> Politico (2018). [EU forces through refugee deal](#). 21 September 2015.

<sup>148</sup> Mattila, M. (2008). [Voting and Coalitions in the Council after the Enlargement](#). *ibid.*

The use of QMV in selected CFSP areas is likely to reduce the possibility for **undue external influence**, as all member states who oppose a decision due to (undue) external influence can be outvoted. The condition for this to have effect is, of course, that the other member states have sound insights and know about the undue external influence on the position of the opposing member state. The effect is going to be the same across all three policy areas.

### 5.2.4. Enhanced QMV in selected CFSP areas

Next to the introduction of the normal manner to reach QMV in the Council, an alternate policy option would be to use an **enhanced QMV in selected CFSP areas** (see Table 23). Such an enhanced form has not applied in the EU yet. The exact number would need to be agreed upon by member states, but a suggestion could be to reach QMV with 89% of member states supporting a decision, including the consent of the HR/VP for the decision. Again the Luxembourg compromise would be used here as a possible brake clause. The assessment compared to the use of QMV in selected CSFP areas (see above) only differs in two criteria: the enhanced form of QMV decreases the identification of member states as EU collective in a minor manner (instead of a major manner), while it leads to a minor increase of undue external influence (instead of a major one).

Table 23: Assessment of policy option 'Enhanced QMV in selected CFSP areas'

Enhanced QMV in selected CFSP areas		
Approval of minimum 89% of member states (24 out of 27), which represent at least [to be defined] % of EU population, plus HR/VP consent. All member states and EU need to implement. <b>Emergency brake of Art. 31(2) is extended to all areas where QMV is used.</b>		
Criterion	Score	Argumentation
Timeliness	Minor increase	QMV in Council increases timeliness. consensus-seeking attitude likely to prevail
		Same across all policy areas
Efficacy	Minor increase	Efficacy through national and EU means will increase; Minor increase, as implementation by opposing member states likely to be necessary minimum.
		Matters for adoption of human rights positions and sanctions, lesser impact on civilian CSDP missions.
External Recognition	Minor increase	Minor increase likely, as stronger recognition of EU as decisive and distinct international actor; also likely to increase EU credibility;
		Matters especially for human rights positions and sanctions where timing and speed matters; lesser impact on civilian CSDP missions;
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments
		Same across all policy areas
	Major decrease	Major decrease of accountability mechanisms for citizens of outvoted member states

Enhanced QMV in selected CFSP areas		
Approval of minimum 89% of member states (24 out of 27), which represent at least [to be defined] % of EU population, plus HR/VP consent. All member states and EU need to implement. <b>Emergency brake of Art. 31(2) is extended to all areas where QMV is used.</b>		
Criterion	Score	Argumentation
Throughput Legitimacy		Same across all policy areas, but national effect more likely to be felt in human rights positions and sanction (as here retaliation more likely)
Identification of member states as EU collective	Minor decrease	Minor decrease of collective identification through outvoting of member states; depends on negotiation process
		Less strong in civilian CSDP missions compared to adoption of sanctions and human rights positions
Avoidance of undue external influence	Minor increase	Any Member state who opposes due to undue external influence can be outvoted (if others know about undue external influence)
		Same across all three policy areas.

The enhanced form of QMV decreases the **identification of member states as EU collective** only in a minor manner, as with the lower number of possible member states to overrule, it is unlikely that it is always going to be the same member states and thus it is unlikely to have a long-term effect on their identification with the collective. A higher QMV threshold would accommodate some of the concerns raised by smaller and medium-sized member states, that they are at a higher risk to be outvoted than bigger member states. But as a remainder of this risk remains also with this enhanced QMV threshold, it is not likely to impact the identification of member states as EU collective. The **avoidance of undue external influence** is increased but minor (compared to the major increase under QMV). If several member states have been unduly influenced, they can be outvoted, but if there are more than three member states, they cannot all be overruled, without endangering the attainment of necessary votes.

On all other criteria there are no reasons to assume that the assessment would change due to the more stringent manner of reaching QMV. No matter what threshold for QMV is still likely that the member states aim to include diverging perspectives and aim to reach a consensus, which will change their negotiation strategy due to the possibility of being outvoted and is therefore going to lead to a minor increase in **timeliness** (same as normal QMV). Also efficacy and external recognition are going to stay the same. One could argue that **efficacy** through national means increases, because more member states actively support the implementation of the taken decision. But on the other hand the higher threshold for reaching QMV makes efficacy through EU means slightly less likely, as it needs more member states to support the decision. These two effects balance each other out on average, which results in efficacy staying the same as under normal QMV. A similar logic is applicable to **external recognition**: it is slightly more difficult to get decisions that foster the recognition of the EU as decisive and autonomous actor due to the higher threshold needed, but in exchange there is less likelihood that the unitary nature of the EU is questioned, because there are less contesting member states.

**Throughput legitimacy** is going to be affected most negatively (same as for normal QMV), simply because for the citizens from outvoted member states it does not make a difference if they are 1 out of 3 member states outvoted (as in enhanced QMV) or 1 of 11 (as in QMV when proposal does come from HR/VP).

### 5.2.5. Super-QMV

One could of course also argue that the threshold for enhanced QMV is not high enough, considering how strongly foreign policy is associated with national sovereignty, which would provide an argument for an extreme form of 'Super-QMV', where the threshold is set at 96% of member states, which means that maximum 1 member state<sup>149</sup> can oppose a decision without endangering the necessary threshold for QMV. Again we must not forget the well-established consensus-seeking attitude in the Council that most likely is going to lead to many decisions being negotiated by consensus. But a Super-QMV policy option could be a viable compromise between ensuring that national concerns by member states are heard sufficiently, but also that single member states cannot hold the EU hostage.

Table 24: Assessment of policy option 'Super-QMV'

Super-QMV		
Approval of 96% of member states (26 out of 27), which represent at least XX% of EU population, plus HR/VP consent		
All member states and EU need to implement.		
<b>Emergency brake of Art. 31(2) TEU is extended to all areas where QMV is used.</b>		
Criterion	Score	Argumentation
Timeliness	Minor increase	QMV in Council increases timeliness. consensus-seeking attitude likely to prevail
		Same across all policy areas
Efficacy	Minor increase	Efficacy through national and EU means will increase; Minor increase, as implementation by opposing member states likely to be necessary minimum.
		Matters for adoption of human rights positions and sanctions, lesser impact on civilian CSDP missions.
External Recognition	Minor increase	Minor increase likely, as stronger recognition of EU as decisive and distinct international actor; also likely to increase EU credibility;
		Matters especially for human rights positions and sanctions where timing and speed matters; lesser impact on civilian CSDP missions;
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments
		Same across all policy areas
Throughput Legitimacy	Minor decrease	Decrease of accountability mechanisms for citizens of outvoted member state. Concerns less citizens but still diminishes their ability to hold someone accountable for decision. Debatable, if this reflects minor or major decrease.
		Same across all policy areas, but national effect more likely to be felt in human rights positions and sanction (as here retaliation more likely)

<sup>149</sup> If an enlargement would take place with seven more MS, the super QMV would be attained with the opposition of a maximum of two Member States.

Super-QMV		
Approval of 96% of member states (26 out of 27), which represent at least XX% of EU population, plus HR/VP consent All member states and EU need to implement. <b>Emergency brake of Art. 31(2) TEU is extended to all areas where QMV is used.</b>		
Criterion	Score	Argumentation
Identification of member states as EU collective	No impact	Minor decrease of collective identification through outvoting of member states; depends on negotiation process
		Less strong in civilian CSDP missions compared to adoption of sanctions and human rights positions
Avoidance of undue external influence	Minor increase	A Member state who opposes decision due to undue external influence can be outvoted (if others know about undue external influence)
		Same across all three policy areas.

Compared to enhanced QMV, the assessment of the use of a super-QMV is most likely to have the most impact on the **identification of member states as a collective**. The less member states can be outvoted compared to normal QMV and enhanced QMV, the more likely it is that member states will feel to be taken seriously and as part of a bigger collective. Yet, in comparison to the current unanimity setting, a super QMV option still ensures that member states are more compromise-seeking in their negotiation attitude, simply because the option for one of them to be outvoted remains. One could argue that the negative effect on accountability and thus **throughput legitimacy** would be less because it only concerns the citizens of one outvoted member state. So even though for these citizens concerned the gravity of impact remains severe, the overall impact on throughput legitimacy is likely to lead to a minor decrease. For all other criteria, the same argumentation as above for enhanced QMV is applicable, where in various criteria the more negative and more positive impacts balance each other out.

### 5.2.6. Activation of passerelle clause through QMV

In its resolution of June 2022 the European Parliament suggested treaty change to introduce **QMV for the activation of passerelle clauses** instead of unanimity in the European Council. This policy option and its impact on the different criteria is **the same as the 'progressive activation of passerelle clauses'** discussed earlier in part 5.1. (see table 17), with the exception on its impact on throughput legitimacy. This policy option is nevertheless included separately here, because such a move to QMV instead of unanimity in the European Council would require treaty change.

Table 25: Assessment of policy option 'QMV to activate passerelle clauses'

QMV to activate passerelle clauses		
EP proposal to amend TEU: Use QMV for European Council to decide to authorise Council to decide by QMV Emergency brake of Art. 31 (2) is extended to all areas where QMV is used.		
Criterion	Score	Argumentation
Timeliness	Major decrease	Major increase in timeliness for Council; increase only minor if more (convincing) use of brake clause.
		Same across all three policy areas.
Efficacy	Minor increase	Efficacy increases because even if not all member states support the decisions, national and EU means can be used for implementation. However, member states outvoted on European Council level are less likely to be cooperative on Council level and during implementation.
		Especially relevant for adoption of human rights positions and sanctions; lesser impact on civilian CSDP missions.
External Recognition	Minor increase	external recognition increases because only in rare situations (convincing justification by MS for brake clause) decision-making will take longer. Signals sound good balance between the consideration of diverging voices and efficient policy-making process.
		Matters especially for adoption of human rights positions and sanctions where timing and speed matters; less impact on civilian CSDP missions.
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments.
		Same across all three policy areas.
Throughput Legitimacy	Major decrease	Major decrease the accountability, especially for citizens of outvoted member states. In other areas counter-balanced through EP involvement. No likely impact on transparency.
		Accountability decreases particularly in human rights and sanctions adoption. This effect is no concern for civilian CSDP missions.
Identification of member states as EU collective	Minor decrease	Outvoted member states might feel not part of the club – depends on dynamics though; it makes EU less inclusive of diverging voices;
		Effect more negative in human rights positions and adoption of sanctions, as these need to be implemented by everyone. (i.e. if HR/VP makes statement on behalf of the EU even if country X was against).
Avoidance of undue external influence	Minor increase	Member states cannot veto a decision due to undue external influence only. This decreases the risk of undue external influence.
		Same across all three policy areas.

The **activation of the passerelle clause through QMV** (see Table 25) is likely to lead to a major increase of **timeliness** of decisions by the Council. The timeliness for the Council negotiations is going to be the same as for the progressive activation of passerelle clause by unanimity (see table 17), but the difference is that European Council is more likely to come to a timely decision to move to passerelle clause through QMV than through the currently required unanimity. In comparison to the use of QMV after a unanimous strategic decision by the European Council (see Table 15), the



decision to activate the passerelle clause only needs to be taken once by the European Council for the whole policy area in question. The negotiation dynamics within the Council when using QMV are going to positively affect the timeliness of decisions, as member states are more likely to adopt more flexible negotiation strategies right from the start, if there is the possibility that they might be outvoted.<sup>150</sup> The increase of timeliness is only minor, if member states use the Luxembourg compromise as brake clause convincingly and thus avoid QMV. No differentiation between the three policy areas is likely.

The *efficacy* is going to increase compared to the current unanimity regime, and its overall assessment it is going to be the same as for the activation of passerelle clauses by unanimity. However, it is likely that those member states who are outvoted on European Council level to activate the passerelle clause for a certain policy area, are also going to be more suspicious and less cooperative when the specific decisions are then adopted in the Council. It is also thus likely that the same member states are then going to be less likely to implement (fully), which is going to harm the efficacy through national means but might also stand in contradiction with the implementation through EU means.

The main difference that the move of activating the passerelle clause by QMV instead of unanimity is going to be on the criterion of *throughput legitimacy*. Whereas QMV in the Council reduces the possible accountability of throughput legitimacy, the impact is only minor because the same member state could veto the introduction of QMV on the European Council level. When using QMV to activate a passerelle clause, the accountability mechanisms and therefore also throughput legitimacy are decreased in a major manner, as the same member state that opposed the move to QMV through the passerelle clause on European Council level might now also be outvoted on the Council level, without its citizens having the opportunity to hold anyone accountable for the impact of these decisions.

The impact on all other criteria through using QMV to activate passerelle clauses is the same as the activation of passerelle clauses through unanimity in the European Council.

### 5.2.7. Flexible opt-in / opt-out system

The last two policy options up for assessment within this category of policy options that require treaty change but remain within the transgovernmental nature of the CFSP are rather unusual and would imply a major break with past practices. We are now first going to look at the impact of a 'flexible opt-in/opt-out system' before looking at the effect of 'reverse decision-making'.

The policy option '**flexible opt-in / opt-out system**' breaks with the existing taboo of European integration to allow more opt-outs after the existing opt-outs in Justice and Home Affairs (Ireland and Denmark since Treaty of Amsterdam), Schengen (Ireland), in CSDP (Denmark till 2022), the EU charter of fundamental rights (Poland) or the Economic and Monetary Union (Denmark)<sup>151</sup>. These existing opt-outs were granted as last resort to get treaty revisions passed, but since then the general tenor is that no more flexibility on the level of treaties should be allowed and thus also no more opt-outs. Professor Vivian Schmidt opposes this general idea and suggests in her work that the EU needs to let go of this conformity principle and should allow more flexible integration to

<sup>150</sup> Pruitt, D. (2002). Strategy in Negotiation. *ibid.*

<sup>151</sup> For more details see <https://eur-lex.europa.eu/EN/legal-content/glossary/opting-out.html>. Also note, that some member states that joined the EU during eastern enlargement are still not members of the Eurozone, although they do not have a formal opt-out of the Economic and Monetary Union.

bring the politics back to policy-making<sup>152</sup>. The advantage of such a system would be that it focuses on those member states that want to cooperate instead of those that oppose a certain decision, with the main drawback that EU negotiations become a flexible mechanism where member states can flexibly decide to be in or out, which might lead to highly complex configurations and make it difficult for outsiders to always fully grasp which member state supports which aspects of a certain policy. In essence, such a flexible opt-in/opt-out system would be an extreme form of enhanced cooperation, where the EU framework is reduced to a negotiation platform for interested member states.

Table 26: Assessment of policy option 'Flexible opt-in / opt-out system'

Flexible opt-in / opt-out system		
An extreme form of letting MS decide to be in or out of any policy decision (proposal by Prof. Vivian Schmidt) to overcome unanimity constraint		
Criterion	Score	Argumentation
Timeliness	Major decrease	Major increase of timeliness of decisions, as those member states can collaborate that agree without having to convince others; Same across all three policy areas
Efficacy	Minor decrease	Efficacy through national means of participating member states, but same as is possible now under unanimity; decreased efficacy through EU means Same across all three policy areas
External Recognition	Major decrease	Majorly decreased external recognition of the EU as an autonomous entity next to EU member states; EU as platform for intergovernmental cooperation when it suits, rather than a fully-fledged international actor. Major decrease in human rights positions; For the adoption of sanctions, flexible opt-in/opt-out is not possible without harming EU integrity. Civilian CSDP missions as 'coalition of the willing' rather than EU mission.
Input Legitimacy	No impact	No direct impact on direct political participation of citizens or national/European parliaments Same across all three policy areas.
Throughput Legitimacy	Minor increase	Increase of accountability through national parliaments and national public discourse Same across all three policy areas.
Identification of member states as EU collective	Major decrease	Major decrease due to prioritisation of own added value vis-à-vis wholesome benefit/costs for the EU as international actor. Negative effect more likely to be strong in adoption of human rights positions and adoption of sanctions; less strong in civilian CSDP missions;
	Major increase	The risk of undue external influence majorly decreases, if member states can go ahead without vetoing state.

<sup>152</sup> Schmidt, V. (2009). [Re-Envisioning the European Union: Identity, Democracy, Economy](#). ibid. See also Schmidt, V. (2006). [Democracy in Europe: The EU and National Politics](#). Oxford University Press.

Flexible opt-in / opt-out system		
An extreme form of letting MS decide to be in or out of any policy decision (proposal by Prof. Vivian Schmidt) to overcome unanimity constraint		
Criterion	Score	Argumentation
Avoidance of undue external influence		Effect more likely to be positive in adoption of human rights positions and adoption of sanctions; less strong in civilian CSDP missions.

A flexible opt-in/opt-out system (see Table 26) would impact the **timeliness** of decisions in a major, positive way, as member states who have an interest in collaborating on a certain topic could do so fairly quickly without having to convince others. Compared to the increased use of differentiated integration (see Table 17) the impact would be even stronger, as there is no need to first try and convince more member states.

The quicker way to get to decisions, however, also leaves its mark on the level of **efficacy**. While a form of differentiated integration would at least increase the efficacy through national means, it is unlikely that through this flexible opt-in/opt-out system the efficacy of those member states that support the decision is going to increase. Rather, it diminishes the possibility of efficacy through EU means over time, what is likely to lead to an overall minor decrease of efficacy

The major, negative impact on **external recognition** is the same here as for the increased use of differentiated integration. And the argumentation is the same: in its extreme form, a flexible opt-in/opt-out system is going to strongly decrease the external recognition of the EU as an autonomous entity next to EU member states, which might leave the impression of the EU being a platform for intergovernmental cooperation between willing member states rather than a fully-fledged international actor. In terms of the three different policy areas, the impact on the external recognition on human rights positions is going to be stark: it will be a statement of various EU member states, but there will not be any recognition of the EU as a whole. For the adoption of sanctions, flexible opt-in/opt-out is not possible without harming EU integrity and in the case of civilian CSDP missions the perception might prevail of a voluntary 'coalition of the willing' of EU member states rather than an EU mission.

There is no likely impact on **input legitimacy**, but Schmidt suggests that this flexible form of opt-in and opt-outs might lead to an increase in **throughout legitimacy**. Her main argument is that the decision to participate in an EU policy would be moved back to national politics, as national parliaments and the national public are going to scrutinise the decisions by government to opt-in or opt-out carefully. This mechanism would bring back 'policy to politics', i.e. policy decisions would be adopted and scrutinised there in the national context where the politics of national control and accountability is strongest<sup>153</sup>. The role of national parliaments might therefore be strengthened. No impact on the role of the EP is to be expected.

Like the increased use of enhanced cooperation, the opt-in/opt-out system would lead to a major decrease in the **identification of member states as a collective**. Member states would see the EU as a functional platform to find like-minded member states for the priorities that they set in their national contexts, but they would not be nudged to consider the necessity or policy impact for the whole of the EU. While for enhanced cooperation the effect is likely to be minor, it is going to be

<sup>153</sup> Schmidt, V. (2009). [Re-Envisioning the European Union: Identity, Democracy, Economy](#), *ibid.*

major for the opt-in/opt-out system because the lack of an overall framework that ensures a collectively pursued coherent strategy.

The risk of **undue external influence** is majorly decreased through the proposed opt-in/opt-out system because member states can go ahead without considering those member states that would go against the decision due (undue) external influence. This effect is likely to be more positive in the adoption of human rights positions and sanctions and is less strong in regard of civilian CSDP missions.

### 5.2.8. Reverse decision-making

The last policy option that would require treaty change but remains strongly grounded in the transgovernmental nature of the CFSP is the option of '**reverse decision-making**' (Table 27). The logic of this proposal is simple: instead of asking member states if they want to support the proposal for an EU decision, the proposal by the HR/VP is deemed accepted, if member states do not proactively engage to stop it. Only if a certain percentage of member states declares its concerns with the proposed policy, the decision is not adopted. The process here is similar to negotiations practices in the Council where the chair normally does not ask who disagrees with the draft on the table, but rather asks if there is anyone who cannot leave with the proposal as presented. While the result of the negotiations might deem the same, the process of engagement for member states is altered and reversed.

Table 27: Assessment of policy option 'Reverse decision-making'

Reverse decision-making		
EU decision proposed by HR/VP/Commission are deemed adopted, if member states do not proactively reach a certain % of votes against the decision in the Council.		
Criterion	Score	Argumentation
Timeliness	Minor increase	Minor Increase of timeliness as member states prioritise proposals where they fundamentally disagree Same across all three policy areas.
Efficacy*	Minor decrease Minor increase	Efficacy via national means remains the same (or decreases slightly), as member states do not feel same buy-in as having considered and discussed proposal at length; Efficacy through EU means might increase slightly because more decisions waved through for EU to implement. Increases for human rights adoptions, but likely to stay equal for sanctions where impact more directly visible to member states; increase likely to be strongest for civilian CSDP missions
External Recognition	Minor increase	Minor increase of external recognition as EU is more likely to be perceived as decisive and autonomous entity next to member states. Also likely to strengthen EU credibility, as decisions will only take longer if major concerns by member states. Matters especially for human rights positions and sanctions where timing and speed matters; lesser impact on civilian CSDP missions;
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments Same across all three policy areas.

Reverse decision-making		
EU decision proposed by HR/VP/Commission are deemed adopted, if member states do not proactively reach a certain % of votes against the decision in the Council.		
Criterion	Score	Argumentation
Throughput Legitimacy	Major decrease	Member states might still be outvoted if they do not act upon a proposal, what reduces accountability and transparency for their citizens
		Same across all three policy areas.
Identification of member states as EU collective	Minor increase	Increased identification as starting point is best option from collective perspective. Only if member states have concerns, they will actively try to shift collective position through argumentation.
		Same across all three policy areas.
Avoidance of undue external influence	No impact	No impact, as balance: more visible which member states have concerns due to (undue) external influence, but risk that third parties focus more strongly on influencing EU starting proposal in Brussels
		Same across all three policy areas.

\* Note: For Efficacy there are two scores: 'efficacy through national means' and 'efficacy through EU means'.

The use of reverse decision-making is likely to increase the **timeliness** of EU decisions, because the process emphasises agreement over disagreement. Also, it is likely that member states focus their energy and prioritise to influence those proposals that they most strongly disagree with. **Efficacy** would remain the same or slightly increase. Efficacy through national means would remain the same (or decrease slightly) as member states do not fill same buy-in as having considered and discussed proposal at length; Efficacy through EU means might increase slightly because more decisions waved through for EU to implement. Considering the three policy areas, efficacy might increase on human rights adoptions, but remain the same for sanctions, where the impact is more directly visible for member states. The efficacy on civilian CSDP missions might increase the most, as an EU mission is assumed as the starting point, and those member states that want to contribute proactively with staff are going to do so anyway.

The use of reverse decision-making is not going to have a discernible impact on **input legitimacy** or **throughput legitimacy**. It is, however, going to increase the **identification of member states as collective**, because the starting point of any policy discussion is the assumingly best option from a collective perspective. Only if member states have concerns, they will actively try to shift collective position through argumentation, but the focus would be more strongly about what is best for the EU than what is in the national interest of individual member states.

The use of reverse decision-making is not going to have an impact on the **avoidance of undue external influence**, because different counter-dynamics are going to balance each other out. On the one hand it would be more visible which member states have concerns due to (undue) external influence, but on the other hand there is an increased risk that third parties focus more strongly on influencing EU starting proposal in Brussels.

## 5.2.9. Conclusion

After the assessment of each policy option in turn, Table 28 provides an overview across all seven core criteria for the decision-making options that would require treaty change but remain grounded in the existing transgovernmental nature of the CFSP. This means that it is still member states who

are the main decision-makers, but the different policy options vary on how a decision is determined to be taken by all or a set of member states. Also the policy options vary on the extent to which they have direct effect on national and EU level or how much they allow member states to not participate in implementation.

The overview shows that the policy option of adjusted constructive abstention would lead to the most increase across the criteria. For all other policy options to impact is more diverse. As already with the policy options above in chapter 5.1, the policy options would have a **more positive impact on the actorness dimension than on the democracy dimension**. An exception is the avoidance of undue external influence, where all policy options put one are also likely to lead to a minor or even major increase. When looking at the **actorness dimension only**, QMV to activate passerelle clauses would lead to a major increase on timeliness and a minor increase on efficacy and external recognition, while any form of QMV as well as adjusted constructive abstention would lead to a minor increase across timeliness, efficacy and external recognition. When looking at the **democracy dimension only**, the adjusted constructive abstention is likely to lead to an increase across the three out of democracy criteria, whereas for all other policy options the impact is diverse again.

When comparing the impact of the policy options per criteria, it shows that the most positive impact would be on the **avoidance of undue external influence** and the **timeliness**. **Efficacy** would also still increase as would **external recognition**. None of the policy options of this cluster is influencing **input legitimacy**, and on average the policy options would have a negative impact on the **identification of member states as EU collective**. **Throughput legitimacy** would be impacted most negatively.

The overview also shows that the modes with **different applied QMV thresholds differ** mostly on the criteria of throughput legitimacy, the identification of member states as EU collective and the avoidance of undue external influence. QMV in selected areas would lead to a major decrease of throughput legitimacy and the identification of member states as collective, whereas a stronger threshold under enhanced QMV would lead to less impact compared to the status quo and therefore only a minor decrease on the identification of member states as EU collective. However, it also only leads to a minor increase to avoid undue external influence. In comparison, Super-QMV has only a minor decrease on throughput legitimacy, but in exchange it does not necessarily impact the identification of member states as EU collective. A similar cost-benefit balance can also be observed for QMV to activate the passerelle clause, which would lead to a major increase of timeliness, but comes at the cost of a major decrease of throughput legitimacy and a minor decrease of the identification of member states as EU collective. In regard of the latter two it is on the same level as enhanced QMV, although it only leads then also only to a minor increase in the avoidance of undue external influence.

This shows that throughput legitimacy is hardly impacted by a tightening of the QMV-threshold. One could argue that super-QMV only leads to a minor decrease, as it is only the citizens of the one outvoted member state whose throughput legitimacy is concerned, which is stronger under enhanced QMV and QMV. Here a fundamental discussion is necessary, **if throughput legitimacy is an absolute or relative quality of EU decision-making**, i.e. if it matters how many citizens are concerned by a lack of throughput legitimacy (a relative argument) or if the lack of throughput legitimacy for only one citizen is already leading to a major decrease (absolute argument). This ethical and philosophical discussion would need further careful consideration because it also touches on what is considered 'just' between member states. Does it matter for our assessment of throughput legitimacy, if it is a small or a big member state who is outvoted? If the (collective) size of the member state(s) of the outvoted member states matters, then a stricter QMV-threshold can reduce the decrease of throughput accountability. But if the approach is that the size of outvoted

voices does not matter, then the decrease of throughput accountability is the same across any QMV policy-mode. It is interesting to note that a stricter QMV-threshold decreases the likelihood of a negative impact on the identification of member states as EU collective. The variations in impact of these QMV options therefore showcases how the assessment of which policy mode is more suitable is highly dependent on how one prioritises the different criteria.

Another interesting point to highlight in Table 28 is the **difference between adjusted constructive abstention and reinforced enhanced cooperation**. Both policy options led to the same outcome: not all member states actively support the policy decision and only those in favour need to implement nationally, while in both policy options EU implementation is possible. The two policy options, however, differ in their process, and this **difference in process leads to the distinctively different likely impact** of each policy option on the seven criteria. Again this finding highlights how important it is to clearly decide which criteria one aims to prioritise.

Table 28: Assessment of decision-making options with treaty change within transgovernmentalism (overview)

Criterion Policy option	Actorness-dimension				Democracy-dimension			
	Timeliness	Efficacy		External Recognition	Input Legitimacy	Throughput Legitimacy	Identification of MS as EU collective	Avoidance of undue external influence
Adjusted <b>constructive abstention</b> *	Minor increase	No imp.*	Minor incr.*	Minor increase	No impact	Minor increase	Major increase	Major increase
Reinforced <b>enhanced cooperation</b>	Minor increase	Minor increase		Minor decrease	No impact	No impact	Minor decrease	Major increase
<b>QMV</b> in selected CFSP areas	Minor increase	Minor increase		Minor increase	No impact	Major decrease	Major decrease	Major increase
<b>Enhanced QMV</b> in selected CFSP areas	Minor increase	Minor increase		Minor increase	No impact	Major decrease	Minor decrease	Minor increase
<b>Super-QMV</b> : Adjusted, strict QMV for selected CFSP areas	Minor increase	Minor increase		Minor increase	No impact	Minor decrease	No impact	Minor increase
<b>QMV to activate passerelle clauses</b>	Major increase	Minor increase		Minor increase	No impact	Major decrease	Minor decrease	Minor increase
<b>Flexible opt-in / opt-out system</b>	Major decrease	Minor decrease		Major decrease	No impact	Minor increase	Major decrease	Major increase
<b>Reverse decision-making</b> *	Minor increase	Minor dec.	Minor incr.*	Minor increase	No impact	Major decrease	Minor increase	No impact

\* Note: For these policy options efficacy is split between 'efficacy through national means' and 'efficacy through EU means'.



### 5.3. Assessment of decision-making options with treaty change beyond transgovernmentalism

The third set of policy-making options goes beyond accepting the existing intensive transgovernmentalism as overarching policy-mode. This means that while the policy modes considered so far altered the mode how member states make decisions, we go here a step further and offer alternative policy options that - in addition to requiring treaty change - would involve other institutional actors next to member states in making CFSP decisions.

There are three policy options under investigation: first we assess the ordinary procedure for selected CFSP areas, where the underlying idea would be to adjust CFSP decision-making as much as possible to the ordinary legislative procedure, while still acknowledging the non-legislative character of CFSP decisions. We then look at an ordinary procedure light, before considering the delegation of decisions to the HR/VP. We are now going to first assess each policy option in turn, before offering a comparative assessment and some concluding reflections.

#### 5.3.1. Ordinary procedure in selected CFSP areas

The introduction of an **ordinary procedure in selected CFSP areas** would mean a considerable break with past practices in EU integration, where foreign policy has firmly been kept as a 'policy apart'<sup>154</sup>. Most other policy areas successively moved to the ordinary legislative procedure, what meant that their adoption of policy decisions happened within the legislative triangle of the European Commission proposing and the Council of Ministers and the European Parliament enjoying co-decision powers. It is with the expansion of the applicability of the ordinary legislative procedure that also the use of QMV in the Council was successively extended. If we would apply the same logic to the CFSP, it would mean that any use of QMV in the Council would be embedded in a wider set of institutional checks and balances, with the EP being on equal footing with the Council in making CFSP decisions. To still respect the peculiarity of the foreign policy not needing legislative acts, the adoption of legislative acts could continue to be excluded (as is now the case in Art. 31(1) TEU).

Table 29: Assessment of policy option 'Ordinary procedure in selected CFSP areas'

Ordinary procedure in selected CFSP areas		
QMV as main decision-making mode, embedded in wider set of institutional checks and balances; equal role for EP as co-decider with Council;		
Criterion	Score	Argumentation
Timeliness	Minor decrease	<p>Due higher number of institutional actors and processes likely decrease of timeliness</p> <p>Less politically contested civilian CSDP missions; time-sensitive human rights positions might test procedural possibilities; sanction adoptions more easily possible, given that they are situated in overall policy direction discussion</p>
Efficacy		Efficacy not effected through national or EU means; indirect effect through higher likelihood for understanding budgetary needs

<sup>154</sup> Maurer, H. & Wright N. (2022). [Foreign Policy](#). ibid.

Ordinary procedure in selected CFSP areas		
QMV as main decision-making mode, embedded in wider set of institutional checks and balances; equal role for EP as co-decider with Council;		
Criterion	Score	Argumentation
	No impact	Same across sanctions and civilian CSDP missions; stronger impact on efficacy for human rights adoption due to EP legacy in this field
External Recognition	No impact	Chance for minor increase but depends on policy processes: if decisions take longer and are more internally politicised, EU perception of undecisive and slow; Yet will lead to increased perception of EU as autonomous international actor next to member states.
		Same across all three policy areas
Input Legitimacy	Minor increase	Minor increase through EP involvement; no impact on national parliaments or direct citizens participation
		Same across all three policy areas
Throughput Legitimacy	Major increase	Likely increase of transparency due to inter-institutional dialogue; increase of accountability through EP involvement
		Same across all three policy areas
Identification of member states as EU collective	Minor increase	Increase of member states (political elite, civil society, citizens) identification, even if no effect on member states governments;
		Effect strongest on sanctions due to direct relevance for national public; human rights positions less strong, and least effect likely for civilian CSDP missions
Avoidance of undue external influence	Minor increase	More veto points make it more difficult to influence a political system and therefore reduce probably of undue external influence
		Most relevant for sanctions and human rights positions; less salient for civilian CSDP missions

The use of an ordinary procedure in selected CFSP areas (see Table 29) is going to impact **timeliness**, but it is unlikely that it is going to increase, given the additional inclusion of additional processes and institutional actors. Over time, the institutions might find an efficient manner of moving files across, but it is unlikely that this will take less time than if the Council decides on its own. The use of QMV in the Council is most likely going to lead to timelier decisions, as member states are likely to adopt a more compromise-seeking negotiation style, when they can be outvoted. But this increase in timeliness will also depend on the persistence of the Council to keep its current practice of aiming for consensus, what might keep the amount of time needed to decide like the current practice. It is therefore most likely that with the use of an ordinary procedure in the CFSP the timeliness is going to slightly decrease.

Considering the three distinct policy areas, their need for time will depend very much if the chosen policy path is providing a new direction or rather builds on established practices. It is reasonable to assume that the adoption of civilian CSDP missions might take less time, simply because they are

less politically decisive and contested, considering the host countries have already agreed to the mission and political negotiations will mainly focus on the details of objectives etc. The adoption of human rights positions might be trickier in practice, given the time-sensitive timeframe they are often operating in, and any such endeavours will need to be carefully prepared well in advance. The adoption of sanctions is going to need some more time too, but as these discussions are mostly situated in a wider policy discussion, it should be less of a problem to accommodate the need for additional policy-making processes.

**Efficacy** through national means is not going to be impacted using the ordinary procedure. Also the efficacy through EU means is likely to only increase indirectly, because through the involvement of the European Parliament the need for sound financial resources for EU instruments is likely to gain even more attention. As the European parliament has co-decision powers on budgetary questions, an involvement in the decision-making discussions might also strengthen the understanding even more for what kind of means the EU actors need to implement EU decisions successfully. Yet, this effect is only indirect, and a direct increase of efficacy is therefore unlikely. Considering the three policy areas, the effect on efficacy might be strongest in the adoption of human rights positions, as here the European parliament has a strong track-record and a legitimate voice. The other two areas are unlikely to be affected.

In terms of **external recognition**, it is unlikely that the introduction of an ordinary procedure is going to have a major impact. Indirectly the EU might be perceived as even slower and less decisive if decisions take longer and go in different directions. But this might be balanced by a situation that once a decision is taken, all institutional actors actively promote it, what in turn is going to strengthen the perception of the EU as autonomous international actor that is more than the sum of its member states. While there is the chance that the external recognition slightly increases, especially at the beginning the effect might be balanced out and external recognition is likely to be the same as now. While the dynamics within the three policy areas might differ, it is likely that the effect on all three of them will be similar.

The inclusion of the European Parliament would increase the **input legitimacy** of CFSP decision-making, although it would not be major as it does not alter the involvement of national parliaments or citizens directly. The inclusion of the European Parliament in the policy-making process is also likely to increase the **throughput legitimacy** in terms of transparency and accountability. The secluded policy-discussions behind closed Council doors would be pulled into an inter-institutional dialogue, which is likely to add more transparency, especially if issues are publicly discussed in committees and in the EP plenary. It is still likely that some discussions will need to be shielded from the public eye due to security concerns or negotiation tactics (as was for example the case during the TTIP negotiations<sup>155</sup>). Accountability mechanisms are also going to be strengthened, because now EU citizens will be able to hold their MEPs accountable for decisions taken in the CFSP. The accountability towards their national representatives in the Council is not going to be affected though, what keeps the increase of throughput legitimacy on a minor level. Again while the dynamics within the three policy areas might differ, it is likely that the effect on all three remains similar.

The use of an ordinary procedure for the CFSP is going to increase the **identification of member states with the EU**. What is key here to consider is that it is likely not going to have a direct effect on member states governments, but on member states more broadly, including political elites, civil society organisations or also engaged citizens. The effect is likely to be minor, as it will depend very

<sup>155</sup> Heldt, E. (2020). [Contested EU Trade Governance: Transparency Conundrums in TTIP Negotiations](#). *Comparative European Politics* 18(2), pp. 215–32.

much on how much interest and attention foreign policy discussions will gather in national public discourses. It is likely that not all discussions will lead to the same amount of public attention across all member states, but on some core issues national debates are going to be likely. So while it is not automatically going to lead to more public deliberation in member states, the use of an ordinary procedure certainly is providing more space and impetus for such public debates to happen.

Considering the three policy areas it is likely that discussions on sanctions are going to gain most public attention in member states, as their effect is easier to translate to national contexts. Human rights positions might gain some public attention, while the adoption of civilian CFSP missions is least likely to be considered relevant for national public discussions.

The use of an ordinary procedure for the CFSP is adding more veto points to the decision-making process, which again makes it more difficult for **undue external influence** to have an effect. Third parties might adjust by spreading their efforts across national and EU actors, but it would take them considerably more effort to gain the same type of influence. The avoidance of undue external influence is therefore going to increase. This might be most relevant for the adoption of sanction or also human rights violations, but it is less likely to matter for civilian CSDP missions.

### 5.3.2. Ordinary procedure light

A middle way to move CFSP decision-making closer to the ordinary legislative procedure without having a full and equal involvement of the European Parliament could be the policy option of an **ordinary procedure light** for the CFSP (see Table 30). To tackle the democratic deficit that introduction of QMV in the Council would bring to CFSP decisions, one could follow the example of European integration and compensate the possible overruling of national interests by QMV in the Council with a second layer of democratic accountability and control through a stronger involvement of the European Parliament. The European Parliament would be involved but not on equal footing with the Council. Thus, this involvement would not have to be full co-decision powers, but it could, for example, include a confirmation of the AFET committee of a QMV decision within a given timeframe, or the EP could be granted consultation or consent powers within a given timeframe.

Table 30: Assessment of policy option 'Ordinary procedure *light* in select. CFSP areas'

Ordinary procedure <i>light</i> in select. CFSP areas		
When QMV as CFSP decision-making mode, embed decision in wider set of checks and balances; stronger role for EP (e.g. consultation or consent role; or AFET confirmation);		
Criterion	Score	Argumentation
Timeliness	No impact	<p>Effect balanced out: increase of timeliness due to QMV in Council, slight decrease through involvement of EP committees; Yet decrease not as time-intense as EP as co-decision maker.</p> <p>Less politically contested civilian CSDP missions; time-sensitive human rights positions might test procedural possibilities; sanction adoptions should be easier possible, given that they are situated in overall policy direction discussion</p>
Efficacy		Efficacy not effected through national or EU means; indirect effect through higher likelihood for understanding budgetary needs

Ordinary procedure <i>light</i> in select. CFSP areas		
When QMV as CFSP decision-making mode, embed decision in wider set of checks and balances; stronger role for EP (e.g. consultation or consent role; or AFET confirmation);		
Criterion	Score	Argumentation
	No impact	Same across sanctions and civilian CSDP missions; stronger impact on efficacy for human rights adoption due to EP legacy in this field
External Recognition	Minor increase	Compared to ordinary procedure less time-loss; therefore chance for minor increase, plus will lead to increased perception of EU as autonomous international actor next to member states.
		Same across all three policy areas
Input Legitimacy	No impact	Compared to ordinary procedure less → as EP involvement more to control and rubber stamp but less likely to have proactive influence
		Same across all three policy areas
Throughput Legitimacy	Minor increase	Likely increase of transparency due to inter-institutional dialogue; increase of accountability through EP involvement
		Same across all three policy areas
Identification of member states as EU collective	Minor increase	Increase of member states (political elite, civil society, citizens) identification, even if no effect on member states governments;
		Effect strongest on sanctions due to direct relevance for national public; human rights positions less strong, and least effect likely for civilian CSDP missions
Avoidance of undue external influence	Minor increase	More veto points make it more difficult to influence a political system and therefore reduce probably of undue external influence
		Most relevant for sanctions and human rights positions; less salient for civilian CSDP missions

This switch to a light form of ordinary procedure would keep the assessment of most criteria the same, except for timeliness, external recognition (both increase) and input legitimacy (decrease). The use of the ordinary procedure light is still going to decrease **timeliness** through the involvement of additional actors, but the expected decrease is much less time-intense as if EP would be full-blown co-decision maker. At the same time the timeliness through the use of QMV in the Council is likely to increase, what would result in an overall balance and no effect compared to the status quo. The timeliness is therefore expected to be like today's way of policy-making.

It is also likely that the **external recognition** is going to increase compared to the ordinary procedure due to the less decreased timeliness, while the external perception of the EU as autonomous international actor next to member states is going to increase compared to the status quo. It is therefore likely that such light version of EP involvement is going to increase the external recognition of the EU.

The **input-legitimacy**, however, is going to remain compared to the status quo and therefore decrease compared to the ordinary procedure, as now the EP involvement is more of a control function than a co-decision-maker on equal footing, what is also limiting the opportunity for direct input into decision drafts.

The assessment of the other criteria is going to be unchanged from the switch from ordinary procedure to ordinary procedure light, and it is also not to be expected that this switch has any major differing impact across the three policy areas.

### 5.3.3. Delegation of selected decisions to the HR/VP

Another option to alter the decision- and policy-making mode considerably would be the delegation of decision-making powers to another institutional actor, like e.g. the HR/VP. In its current role the HR/VP supports the initiation and implementation of EU foreign policy decisions, but there is no independent decision-making role for the HR/VP.

Table 31: Assessment of policy option 'Delegate selected decisions to the HR/VP'

Delegation of selected decisions to the HR/VP		
Certain CFSP decisions are delegated to the HR/VP to make on behalf of the EU		
Criterion	Score	Argumentation
Timeliness	Major increase	Would make decisions concerned quicker and more adaptable
		More likely to work on adoption of human rights positions; for sanctions member states involvement supports assessment of impact across EU territory; civilian CSDP missions profit from member states involvement due to provision of resources in implementation.
Efficacy	No impact	Increase of efficacy through EU means in terms of political communication but not for rest, as depends on budgets etc; no impact on national efficacy
		More likely increase for adoption of human rights positions; member states involvement needed for sanctions and civilian CSDP missions
External Recognition	Minor increase	Increase of perception as decisive, maybe less united at times; definitely more autonomous recognition
		Strongest on human rights and sanctions; less likely to have discernible impact for civilian CSDP missions
Input Legitimacy	No impact	No impact on direct political participation of citizens or national/European parliaments
		Same across policy areas
		Slight decrease of accountability if no additional checks and balanced introduced

Delegation of selected decisions to the HR/VP		
Certain CFSP decisions are delegated to the HR/VP to make on behalf of the EU		
Criterion	Score	Argumentation
Throughput Legitimacy	Minor decrease	Strongest on human rights adoption; national accountability still possible on implementation of sanctions and civilian CSDP missions
Identification of member states as EU collective	Minor decrease	Minor decrease of identification of member states as EU collective without counter-measures, while counter-dynamic that seen as collective foreign minister
		Same across policy areas
Avoidance of undue external influence	Minor decrease	Increase due to elimination of veto points
		Undue external influence easier on human rights, less straight-forward on sanctions and civilian CSDP missions

The **delegation of selected decisions to the HR/VP** (see Table 31) would have a major positive impact on the **timeliness** of EU decisions. Such decisions could entail implementing decisions or other decisions that are not fundamentally changing the course of EU policy. While it is likely that the HR/VP still consults member states regularly, it would shorten the decision-making process and therefore increase timeliness. It might also make EU decisions more flexible and adaptable towards changing contexts, as long as they do not imply a major shift of EU policy, what should first be discussed with EU member states. In regard of the three policy areas, such delegation seems most likely in the adoption of human rights positions, while the adoption for sanctions might require the involvement of member states to carefully assess the implications of EU sanctions across the whole of EU territory. The adoption of civilian CSDP missions might also still profit from an involvement of EU member states in decisions and therefore their early buy-in, as the human resources necessary for such mission are provided by them.

The delegation of selected decisions to the HR/VP is likely to keep **efficacy** on the same level as today. One might argue that efficacy through EU means might increase in terms of the use of political communication in the same hand of the HR/VP, but all other instruments depend on available budgets decided by member states and the European Parliament. This slight possibility for an increase is however balanced out through the efficacy via national means, as the HR/VP would then have to work much harder to ensure that member states share the decision taken and implement through national means. Due to the more political nature of the adoption and implementation of human rights positions, the impact might be most likely in this area, whereas the adoption of sanctions would always require the implementation through member states as would civilian CSDP mission.

In terms of **external recognition**, it is likely that the EU would be perceived more decisive, while there is a danger that it is also seen as less united. It would definitely increase the perception of the EU as an autonomous international actor that is more than the sum of its member states. This effect is likely to be strongest for human rights adoption and sanctions but would have less of an impact in the area of civilian CSDP missions.

**Input legitimacy** is not going to be affected by the delegation of selected decisions to the HR/VP, whereas one could argue that **throughput legitimacy** is slightly decreasing if no additional checks and balances for the HR/VP are put in place. The HR/VP is accountable to the European Parliament, but there is no direct link of how national parliament or citizens can hold the HR/VP accountable for decisions made. Also now citizens only have weak instruments to hold their government accountable for decisions taken in the Council, but this would then be even further removed if these decisions are taken by the HR/VP. Member states could hold the HR/VP accountable every five years upon appointment with the new European Commission, but there are no accountability mechanisms in place in between. Transparency is likely to remain more or less the same, as also now it is not always traceable for the public how or why decisions are taken in the Council. The accountability decrease would be strongest in regard of the adoption of human rights positions, whereas for sanctions and civilian CSDP mission national publics could hold their governments at least accountable for their role in implementation.

The delegation of selected decisions to the HR/VP is likely to lead to a minor decrease of the **identification of member states as EU collective**, especially if no other measures are put in place to counter-balance this perception. It could be argued that the delegation of selected decisions to an agent showcases a collective identity that all member states share, because they perceive the agent as collective foreign ministers who makes decisions on behalf of their community. Yet, it is not self-evident that such a feeling is going to prevail across switching governments and time, and mechanisms might need to be put in place to remind member states of this reasoning. On the other hand, it is likely that member states disengage from EU decisions taken by the HR/VP as the process of their buy-in is reduced. This showed, for example, in the switch from presidency chairs to permanent EEAS chairs in Council settings with foreign policy dimensions, where the dynamics of member states understanding the difficult position of the chair in finding a consensus and showing more willingness to adjust their positions moved to an us-member-states versus them-EEAS mentality.<sup>156</sup> It is likely to assume that a similar dynamic might emerge if decisions are delegated to the HR/VP, and no discernible impact across the three policy areas is expected.

The **avoidance of undue external influence** is going to increase, simply because possible veto points in the Council are eliminated, what makes it easier for third parties to influence decisions in a more targeted manner. This might be easier on human rights adoptions, but less straight-forward on possible sanctions and civilian CSPD missions, where the involvement of member states is still necessary in implementation.

### 5.3.4. Conclusion

After the assessment of each policy option in turn, Table 32 below provides an overview of the scores across all seven core criteria for the decision-making options that would require treaty change and go beyond the existing transgovernmental nature of the CFSP. This implies the involvement of other institutional actors next to member states in making CFSP decisions.

The overview shows that the option of ordinary procedure *light* is likely to lead to an increase across most criteria, similar to ordinary procedure (if one ignores the minor decrease on timeliness). The effect of a delegation of selected decisions to the HR/VP is likely to lead to the most diverse impact across criteria, with a decrease on three out of four criteria of the democracy-dimension.

<sup>156</sup> Juncos, A. & Pomorska, K. (2023a). [The Role of EEAS Chairs in Council Negotiations on Foreign and Security Policy Post-Lisbon](#). *ibid.*; Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) *ibid.*; Vanhoonacker, S., Pomorska, K. & Maurer, H. (2011). [The Presidency in EU External Relations: Who is at the helm?](#) *Politique européenne* 35(3), pp. 139–64.



The policy options of this third policy mode show a more diverse impact across the actorness- and democracy dimension and in this regard they are distinct from the assessment of policy modes assessed earlier (in chapters 5.1 and 5.2), which showed a more positive impact on the criteria of the actorness-dimension compared to the democracy-dimension.

When comparing the impact of the policy options per criteria, it shows that the most positive impact would be on **external recognition**. All other criteria would have a minor positive effect, except for **efficacy**, where no discernible impact is likely.

Table 32: Assessment of decision-making options with treaty change beyond transgovernmentalism (overview)

Policy option	Criterion	Actorness-dimension			Democracy-dimension			
		Timeliness	Efficacy	External Recognition	Input Legitimacy	Throughput Legitimacy	Identification of member states as EU collective	Avoidance of undue external influence
Ordinary procedure in selected CFSP areas		Minor decrease	No impact	No impact	Minor increase	Major increase	Minor increase	Minor increase
'Ordinary procedure <i>light</i> ' in selected CFSP areas		No impact	No impact	Minor increase	No impact	Minor increase	Minor increase	Minor increase
Delegation of selected decisions to the HR/VP		Major increase	No impact	Minor increase	No impact	Minor decrease	Minor decrease	Minor decrease

## 6. Discussion and conclusions

This report analyses the potential impacts of a change from unanimity to qualified majority voting or other policy-making modes in the Council in selected areas of EU Foreign Policy. It explores tools to reduce the costs of the status quo of unanimity in the Council while considering the increased EU added value as well as potential costs of alternative solutions.

This report **identifies and analyses 17 alternative policy options** that range from decision-making opportunities within the current legal framework (e.g. increased use of constructive abstention or passerelle clauses, see chapter 3.1) and options that require treaty change as they alter the way member states make decisions in a transgovernmental manner (QMV in selected areas etc, see chapter 3.2) to options that would not only require treaty change but also alter the institutional balance in a manner that goes beyond the existing transgovernmental mode of the CFSP (delegation of decision-making power to other institutional actors, see chapter 3.3). Each of this policy option is assessed according to seven assessment criteria drawn from EU actorness and EU democracy debates: **timeliness, efficacy, external recognition, input legitimacy, throughput legitimacy, identification of EU member states as collective** and **avoidance of undue external influence**. The assessment of the likely impact of each policy option on the seven criteria is also considered for three specific policy areas: human rights, civilian missions and sanctions (see chapter 5 for details).

### 6.1. Summary of the main findings of this study

The findings of this study show that there are no simple fixes to overcome the shortcomings of the current CFSP decision-making mode of unanimity. As starting point it is indispensable to recognise that a **continued use of unanimity is not going to have a neutral impact on EU actorness over time**, but international and global politics are marked by an increased complexity and an accelerating occurrence of 'wicked problems', which require agile, flexible and transformative policy responses. It is therefore likely that a **continued use of unanimity is going to decrease timeliness and the external recognition** of the EU, while at the same time it is going to **deteriorate the identification of member states as EU collective**.

Some alternative policy options would achieve considerable, positive impact on the actorness-criteria, but they come with negative impacts on the democracy-criteria. Any decision for one or the other policy mode therefore needs to be informed by a clear prioritisation of what criteria are considered most salient and what negative implications are considered secondary. The results also show that possible remedies to overcome negative consequences on the democracy criteria (i.e. by a stronger involvement of the EP) at the same time do weaken the positive impact on the actorness criteria.

The likely impact of each policy option on the seven criteria is summarised in Table 33 below, indicating if the impact is majorly negative (red or MD), minor negative (light red or md), the status quo (white or NI), minor positive (light green or mi) and majorly positive (green or MI). Few times the score is divided, as is for example the case for the criteria of efficacy, where the policy option might lead to an increase of efficacy through EU means but remain on the status quo for efficacy through national means (see assessment in chapter 5 for details).

Table 33: Impact of identified policy options across seven criteria

MD: major decrease		md: minor decrease		NI: no impact		mi: minor increase		MI: major increase	
Policy options	Criterion	Actorness-dimension			Democracy-dimension				
		Time-liness	Efficacy		External Recognition	Input Legitimacy	Through put Legitimacy	Identifica tion as EU collect.	Avoid-ance undue ext. influence
Policy modes currently possible	Unanimity*	md	NI	md	md	NI	NI	md	md
	Increased use of Constructive Abstention*	mi	NI	mi	NI	NI	NI	mi	mi
	QMV as follow-up to unanimous strategic	mi	md	mi	mi	NI	NI	mi	NI
	'Luxembourg Compromise'	mi	mi	mi	mi	NI	NI	mi	mi
	Differentiated Integration*	mi	mi	NI	MD	NI	NI	md	MI
	Progressive Activation of Passerelle Clause	MI	mi	mi	mi	NI	md	md	
Transgovernmental modes with treaty change	Adjusted constructive abstention*	mi	NI	mi	mi	NI	mi	MI	MI
	Reinforced enhanced cooperation	mi	mi	md	md	NI	NI	md	MI
	QMV in selected CFSP areas	mi	mi	mi	mi	NI	MD	MD	MI
	Enhanced QMV in selected CFSP areas	mi	mi	mi	mi	NI	MD	md	mi
	Super-QMV: Adjusted, strict QMV for selected CFSP areas	mi	mi	mi	mi	NI	md	NI	mi
	QMV to activate passerelle clauses	MI	mi	mi	mi	NI	MD	md	mi
	Flexible opt-in / opt-out	MI	md	MD	MD	NI	mi	MD	MI
	Reverse decision-making*	mi	md	mi	mi	NI	MD	mi	NI
Beyond transgov.	Ordinary procedure in selected CFSP areas	md	NI	NI	NI	mi	MI	mi	mi
	'Ordinary procedure <i>light</i> ' in selected CFSP areas	NI	NI	mi	mi	NI	mi	mi	mi
	Delegation of selected decisions to the HR/VP	MI	NI	mi	mi	NI	md	md	md

\* Note: For these policy options efficacy is split between 'efficacy via national means' and 'efficacy via EU means'.

+ Note: Timeliness is split in two scores to highlight that it improves timeliness in the Council but leads to a decrease of timeliness on European Council level. There are two scores for throughput legitimacy, because the likelihood of accountability increases of the European Council, but not of the Council.

Within the decision-making options that are possible within the current legal framework the use of the **Luxembourg Compromise** as brake clause in combination with QMV as well as the **increased use of constructive abstention** and the **use of QMV as follow-up to unanimous strategic decisions** are likely leading to a minor increase on at least half of the criteria. The Luxembourg compromise in combination with QMV would likely increase all three criteria on the actorness dimension (timeliness, efficacy and external recognition) and has a positive effect on the identification of member states as EU collective, while it is likely to decrease the possibility of undue external influence. An increased use of constructive abstention increases timeliness and efficacy through EU means, and it also positively impacts the identification of member states as EU collective and the avoidance of undue external influence. The **use of QMV as follow-up to unanimous strategic decisions** would also lead to a minor increase on efficacy, the external recognition of the EU but also on the identification of member states as EU collective. It would not impact input legitimacy or the avoidance of undue external influence, and it would lead to a minor increase of throughput legitimacy of the European Council but not the Council. Its impact on timeliness is balanced out: it is likely that timeliness in the Council increases once a strategic decision allows the Council to decide by QMV. Yet, it is also likely that the negotiations of such strategic decisions that trigger QMV in the Council are going to take considerably more time on the European Council level, as heads of states or government are going to be more cautious in what they agree to.

Similar in the overall impact across all seven criteria but qualitatively different in its impact on each criteria individually is the **progressive activation of the passerelle clause**. This policy option would have the **strongest impact of all policy options on the actorness dimension**, with a major increase of timeliness and an increase of efficacy and of external recognition. But it **comes with the price of decreasing throughput legitimacy and the identification of member states as EU collective** on the democracy dimension. The only positive impact that is likely on the democracy dimension is on the avoidance of undue external influence.

An **increased use of differentiated integration** leads overall to a mixed result. It is likely going to lead to an only **minor increases** on the actor dimension in terms of timelines and efficacy through national means, but it also leads to a major decrease of external recognition. On the democracy dimension it has a major positive impact on the avoidance of undue external influence, but it decreases the identification of member states as EU collective.

Again, we must not forget that within this category of currently possible policy options the status quo – unanimity – is still showing the most negative impact over time. The **continued use of unanimity is going to decrease timeliness and the external recognition** of the EU, while at the same time it is going to **deteriorate the identification of member states as EU collective**.

The decision-making options, for which treaty change is necessary but which remain within the existing transgovernmental policy-mode, as they keep member states as main decision-makers but alter how they reach decisions, again shows a widely scattered impact of the policy options, with an overall more positive impact on the criteria of the actorness-dimension than on the criteria of the democracy-dimension. **QMV in selected policy areas, enhanced QMV, super-QMV or QMV to activate passerelle clauses** lead to increases on all criteria of the actorness dimension (timeliness, efficacy, external recognition). However, all these QMV-options come with **a decrease of throughput legitimacy and the identification of member states as EU collective** (with the exception of super-QMV on the identification of EU collective, which has no impact). The decrease of throughput legitimacy and on the identification as EU collective is stronger for QMV than for enhanced QMV or super-QMV.

**Adjusted constructive abstention**, where a member state needs to convince others of the justified reason to veto in order not to be required by the others to constructively abstain, is likely to lead to increases across most of the criteria on the actorness- and democracy-dimension, with the exception of national efficacy and input legitimacy. It would also likely have a majorly positive impact on the identification as EU collective and the avoidance of undue external influence as well as a minor positive impact on throughput legitimacy.

**Reinforced enhanced cooperation** leads to a more diverse assessment, similar to the QMV options. It is likely to lead to a minor increase on timeliness and EU efficacy and a major increase on the avoidance of undue external influence, while it decreases external recognition and the identification of member states as EU collective.

A **flexible opt-in/opt-out system** would lead to the most diverse impacts across the different criteria. Its major positive impact on timeliness and avoidance of undue external influence would be accompanied by a major negative impact on external recognition and the identification of member states as EU collective. Similar although less extreme in the impact across criteria is the assessment of **reverse decision-making**, where member states must become active to reverse a proposed decision. It would increase timeliness, the efficacy through EU means as well as external recognition, but comes with a minor negative impact on efficacy through national means and has a major negative impact on accountability.

The policy-making options with treaty change that would go beyond transgovernmentalism and involve other institutional actors next to member states in making CFSP decisions complement the colourful assessment picture. While any attempt to move CFSP decision-making towards an **ordinary procedure** or an **ordinary procedure light** would lead to an increase of at least three out of four democracy criteria, their possible increase on the actorness-criteria is negligible.

An ordinary procedure for the CFSP would increase all four democracy criteria with a major increase of accountability, but it would also imply a minor decrease of timeliness. The **delegation of selected decisions to the HR/VP** would have a major impact on timeliness and a minor impact on external recognition, but it comes with the cost of decreasing throughput legitimacy, the identification of member states as EU collective and the avoidance of undue external influence.

## 6.2. Key take-aways

### 6.2.1. There are no easy wins through the adjustment of decision-making modes

The analysis shows that the potential impacts of a change from unanimity to alternative forms of decision- and policy-making are not straightforward: increases on the actorness dimension mostly go hand in hand with a decrease on other criteria. The **overall effect of the policy option** therefore **depends on the prioritisation of criteria**, and (as always) a **careful and deliberate balance** needs to be found between **efficiency, effectiveness and democratic governance**.

This said, the **continued use of unanimity** in the CFSP is going to lead to **a more negative impact** in the future. International and global politics is marked by an increased complexity and an accelerating occurrence of 'wicked problems', which require agile, flexible and transformative policy responses.<sup>157</sup> It is therefore likely that a continued use of unanimity is going to decrease timeliness and the external recognition of the EU, while at the same time it is going to deteriorate the identification of member states as EU collective time, when single member states disrespect the informal procedural rules<sup>158</sup>. Additionally, when geopolitical tensions from non-democratic states keep increasing and challenging the EU's democratic way of governance, it also becomes an existential identity question, if not also foreign policy decisions should follow a stronger democratic scrutiny, either through parliamentary involvement on national or European level or through direct citizens' engagement.

The **introduction of QMV – in whatever form – is not a panacea** for all the ills of EU foreign policy action. It is likely to positively impact the criteria of the actorness-dimension (timeliness, efficacy, external recognition) and lead to decrease of the possibility of undue external influence, but it comes with considerable democracy and EU identity costs by decreasing throughput legitimacy and the identification of member states as EU collective. The different formats on how to introduce more QMV matters though on how high these costs would be. **QMV as follow-up to unanimous strategic decisions** made in the European Council – a policy option that is already available within the current legal framework of the treaties – is likely to be the **most balanced QMV-option**. It increases the timeliness in the Council (not in the European Council though where it might lead to a decrease of timeliness), improves efficacy and external recognition. On the democracy dimension it increases the identification of member states as EU collective and has the potential to contribute to more throughput legitimacy (see Table 15 for more details). It does not, however, increase input legitimacy through national or European parliamentary involvement or citizens participation. In comparison, the **progressive activation of the passerelle clause** has a stronger positive effect on timeliness (see Table 18). It also reduces the possibility for undue external influence slightly, but it comes with a minor negative impact on throughput legitimacy and the identification of member states as EU collective. It shares this negative impact on the democracy dimension with the other QMV forms. Yet, the negative impact is only minor in comparison to the **introduction of QMV in selected policy areas**, where the negative impact on throughput legitimacy and the identification as EU collective is likely to be major (see Table 22). These negative effects could be mitigated by

<sup>157</sup> See, for example, Barnett, M., Pevehouse, J. & Raustiala, K. (2021) (eds.), [Global Governance in a World of Change](#). *ibid.* [Power in global governance](#). *ibid.* Slaughter, A. (2017). [The Chessboard and the Web](#). *ibid.* Slaughter, A. (2018). [In the Digital Age, Foreign Policy Won't Be Decided by Presidents](#). *ibid.*; Lovato, M., & Maurer, H. (2022). [Process and position power: a social relational research agenda about state power in negotiations](#). *ibid.*

<sup>158</sup> Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#), *ibid.*

raising the QMV threshold through **enhanced QMV or super-QMV**, although the major decrease of throughput legitimacy remains (see Table 23 and Table 24).

### 6.2.2. Process matters as much as outcome for CFSP policy-making.

The assessment of the impact of alternative policy options showcases that the process of negotiating CFSP policy is often as important as the outcome of CFSP discussions. This is, for example, showcased in the different impact of adjusted constructive abstention compared to reinforced enhanced cooperation. On paper both policy options lead to the same positioning of member states, but they are likely to impact the seven criteria differently (see Table 28 and chapter 5.2.9.)

This **salience of the process next to the outcome** is due to the peculiar nature of the CFSP as a collective cooperation system, where **member states are the key actors** not only during the decision-making phase but **also in the implementation and legitimation** of these CFSP decisions. EU foreign policy remains special in that its collective EU foreign policy remains in parallel to the national foreign policies of its member states.<sup>159</sup> The EU's international weight is therefore strongest when EU actors as well as national political and diplomatic leaders promote the same position as collectively agreed in Brussels. The **buy-in of member states** in EU decisions is indispensable for implementation, but in the current legal set-up it is also the **main line of legitimation** for foreign policy-decisions vis-à-vis citizens. Next to making EU decision-making more efficient, it is often suggested that the EU needs to work on a **common strategic culture that facilitates the collective understanding for joint challenges and binds member states** in their commitment to shape regional and global politics as active member of a strong EU. An insightful experience in this regard is provided from the switch to permanent EEAS chairs in different Council formations, where member states representatives agree in their assessment that it brought more professionalism and stability, but also came with the loss of the collective experience of having to be the chair during one's presidency, what had fostered a significant amount of we-feeling<sup>160</sup>.

One central element for the development of such a common strategic culture are the **possibilities for honest and respectful exchanges** during Council negotiations, which often take more time than if member states decide by QMV. But member states identify these processes as indispensable for the collective system to work, and it is especially those policy options that increase the identification of member states as EU collective that could foster such a collective spirit, i.e. adjusted constructive abstention, but also the increased use of constructive abstention, QMV as follow-up to unanimous strategic decisions, the Luxembourg Compromise, reverse decision-making, the ordinary procedure or the ordinary procedure light. Especially the last 12 months since the Russian invasion of Ukraine brought an increased use of constructive abstention, and this report highlighted some more flexible forms of decision-making, which member states could consider, like the proposed adjusted constructive abstention or reverse decision-making. Experiences with policy options from other policy areas are useful for inspiration, but their insights do not replace the **need to carefully calibrate and adjust the respective policy option to the peculiarities of the CFSP**.

However, the predominant reliance on member states' governments for EU foreign policy decisions can also be questioned, especially if we envisage stronger involvement of EU citizens and parliamentary scrutiny to **strengthen the democratic legitimacy of EU policy-making**. Therefore an **experimentation with other formats** should be encouraged.

<sup>159</sup> Orenstein, M. & Kelemen, D. (2017). [Trojan Horses in EU Foreign Policy](#). *ibid.*

<sup>160</sup> Juncos, A. & Pomorska, K. (2023a). [The Role of EEAS Chairs in Council Negotiations on Foreign and Security Policy Post-Lisbon](#). *ibid.* Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) *ibid.*



### 6.2.3. An active EP scrutiny can contribute to the democratic governance of EU foreign policy

Most of the assessed policy options affect the processes of how member states make decisions in the CFSP. The **role of the European Parliament would hardly change** across most policy options, also because none of the policy options would increase input-legitimacy (i.e. direct participation of citizens or national/European parliamentary participation in policy-making process) except for the ordinary procedure. However, especially among the policy options that would require treaty change (i.e. those within the transgovernmental mode and those that would go beyond) an **involvement of the European Parliament could counterbalance the decrease of throughput legitimacy** (i.e. accountability and transparency). Any form of QMV, enhanced QMV or super-QMV would increase the timeliness, efficacy and external recognition of EU foreign policy, but it comes with the cost of impacting the democratic governance process and especially throughput legitimacy in a negative manner. An involvement of the European Parliament could remedy such legitimacy concerns (as proposed through the ordinary procedure or the ordinary procedure light), even if such a parliamentary involvement would lessen possible positive effect on the actorness dimension.

Furthermore, the **European Parliament can provide the necessary impetus and critical leadership** that is needed to kindle and nurture a **necessary debate across the European Union** of what type of foreign policy actor the EU is meant to be. Such a debate is indispensable to anchor EU foreign policy decisions in democratic governance processes and to foster a common strategic culture that goes beyond the leadership of national governments of EU member states.

### 6.2.4. The impact of policy options varies between civilian CSDP missions, human rights and sanctions

The assessment of alternative policy options according to the selected criteria also highlighted that their impact is expected to vary across the three chosen policy areas. For **civilian CSDP missions** the use of some flexible form of decision-making like QMV would be less intrusive, as in this area the active commitment of member states is needed anyway, and those member states who would not like to actively commit and support the mission, need only not to disagree that the mission flies under EU flag. For the adoption of **human rights positions** the timeliness and collective support for a position is more crucial, yet it also matters considerably if a statement is done on behalf of a group of EU member states or on behalf of the EU. It might be a good area therefore to consider, if EU actors could represent positions also in situations, where not everyone has been on board (e.g. policy option of reinforced enhanced cooperation), especially when a possible negative impact in the form of retaliation is unlikely. The **adoption of sanctions is comparatively the most difficult** policy area to consider for flexible forms of policy-making, which is also showcased by the current practice of member states to decide follow-up legislation to implement CFSP sanction decisions by consensus only.

A twofold argument needs to be considered in regard of sanctions: sanctions only have a strong impact if they include the whole of the EU, i.e. if they are implemented across the common market or for the whole of the Schengen area. A situation, where some member states implement insufficiently due to their resistance of the sanction decision, would not only **harm the effect of the sanction regime** but it would also jeopardize the integrity of the EU common market or other EU policies. Secondly, sanctions are a tool in international politics to signal disapproval, and they often come at considerable costs on both sides or might even lead to considerable counter-sanctions. The costs for the latter are likely to have a direct and strong effect on EU citizens' lives, and EU citizens need to be in the position to hold their political representatives accountable for the effect of any such measures. If sanctions would be decided by QMV in the Council, citizens of outvoted member

states have **no legitimate ways to hold those responsible for the decisions accountable**, what is not in line with the democratic aspirations of the EU.

### 6.2.5. The policy options and policy-making modes reflect the preferred EU's finalité and EU's international identity

The discussion of the different policy modes also time and again highlights how much the prioritisation of one criteria over another links to the **much bigger debate of what the EU is meant to be – in its political identity but also in its identity as foreign policy actor**. If the EU is supposed to be more than an international negotiation platform (as many international organisations are), then the identification of member states and their citizens with a collective EU community is highly salient. Yet such identification processes require a different approach than some of the efficiency arguments that are meant to strengthen EU actorness. If EU foreign policy is meant to be more than the intergovernmental coordination and cooperation between governments of EU member states, then it needs the continued fostering of a **common strategic culture not only among EU member states' government, but also among EU political elites, EU and national members of parliaments, policy observers across the 27 EU member states, and EU citizens**.

The international experiences of the last years also showcased that the EU can only actively and convincingly promote its preferred system of democratic governance if it is willing to work on and **invest in its EU-internal democratic processes**. The latter need time, but these processes are essential, if the EU aims to be taken seriously as a partner who continuously aims to learn on how to improve its own democratic governance<sup>161</sup>. An open debate about alternative and more flexible forms of collective decision- and policy-making is therefore highly necessary, but equally necessary is to err on the side of caution: it is not sufficient to focus on the EU actorness criteria only when considering a strong, impactful and democratic EU as international actor in the future.

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<sup>161</sup> Nicolaidis, K. & Youngs, R. (2023). [Reversing the Gaze: Can the EU Import Democracy from Others?](#) Journal of Common Market Studies (early view).

## References

- Adler-Nissen, R. (2014). [Opting Out of the European Union: Diplomacy, Sovereignty and European Integration](#). Cambridge University Press.
- Allen, D. (1998). Who speaks for Europe? in: Petersen, J. & Sjurgen, H. (Eds.), *A Common Foreign Policy for Europe?* (pp. 41-58), Routledge.
- Barbé, E. & Morillas, P. (2019). [The EU global strategy: the dynamics of a more politicized and politically integrated foreign policy](#). *Cambridge Review of International Affairs* 32, pp. 753–770.
- Barnett, M. & Duvall, R. (2004). [Power in global governance](#). Cambridge University Press.
- Barnett, M., Pevehouse, J. & Raustiala, K. (2021) (eds.), [Global Governance in a World of Change](#). Cambridge University Press.
- Bendiek, A. & Kempin, R. (2018). [Qualified Majority Voting and Flexible Integration for a More Effective CFSP? A Critical Examination of the EU's Options](#). SWP Comment No.25, June 2018.
- Bickerton, C., Hodson, D. & Puetter, U. (2015a). [The New Intergovernmentalism: European Integration in the Post-Maastricht Era](#). *Journal of Common Market Studies* 53, pp. 703–722.
- Bickerton, C., Hodson, D. & Puetter, U. (2015b) (eds). [The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era](#). Oxford University Press.
- Bickerton, C. (2013). [European Integration: From Nation-States to Member States](#). Oxford University Press.
- Biedenkopf, K., Costa, O. & Góra, M. (2021). [Introduction: shades of contestation and politicisation of CFSP](#). *European Security* 30, pp. 325–343.
- Böttner, R. (2022). [Special legislative procedures in the Treaties](#). Institutional balance and sincere cooperation. Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee. PE 738.331. Brussels.
- Bretherton, C. & Vogler, J. (2013). [A global actor past its peak?](#) *International Relations* 27, pp. 375–390.
- Council (2021). [Council Conclusions on Civilian CSDP Compact](#). 14740/21.
- Council (2022a). [Council Decision \(CFSP\) 2022/1285](#) of 21 July 2022 amending Decision (CFSP) 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force.
- Council (2022b). [Council Decision \(CFSP\) 2022/1284](#) of 21 July 2022 amending Decision (CFSP) 2022/339 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces.
- Dehousse, R., Novak, S. & Bendjaballah, S. (2017). [Consensus under pressure. The evolution of conflict in the EU legislative process](#). *Politique européenne* 58, pp. 44–70.
- EU Debates (2021). Disagreement in EU Council on use of qualified majority voting in implementation of EU Action Plan. YouTube Video: <https://www.youtube.com/watch?v=NVzVh7pZtdY>.
- Euractiv (2022). [Denmark expected to join EU defence cooperation within month](#). 3 June 2022.
- European Commission (2018). [A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy](#). Communication from the Commission to the European Council, the European Parliament and the Council.
- European Parliament (2017). [European Parliament Resolution of 16 February 2017](#) on Possible Evolutions of and Adjustments to the Current Institutional Set-up of the European Union (2014/2248(INI)).
- European Parliament (2021b). [Report on the implementation of the common foreign and security policy - Annual Report 2021](#).
- European Parliament (2022). [European Parliament Resolution of 9 June 2022](#) on the Call for a Convention for the Revision of the Treaties.
- European Parliament Committee on Constitutional Affairs (2023). [Draft report on the implementation of the passerelle clauses in the EU Treaties](#) (2022/2142(INI)).
- European Parliament Committee on Economic and Monetary Affairs (2023). [Opinion on the implementation of passerelle clauses in the EU Treaties](#) of the Committee on Economic and Monetary Affairs for the Committee on Constitutional Affairs (2022/2142(INI)).

- European Parliament Think Tank (2021a). [Qualified Majority Voting in Foreign and Security Policy](#): Pros and Cons.
- Gehring, T., Oberthür, S. & Mühleck, M. (2013). [European Union Actorness in International Institutions: Why the EU Is Recognized as an Actor in Some International Institutions, but Not in Others](#), *Journal of Common Market Studies* 51(5), pp. 849–65.
- General Secretariat of the Council. (2011). [EU Statements in multilateral organisations](#) - General Arrangements. 15901/11.
- Grevi, G., Zeiss, M. Morillas, P. & Soler i Lecha, E. (2020). [Differentiated Cooperation in European Foreign Policy: The Challenge of Coherence](#). EU IDEA Policy Paper No. 5, European Policy Center.
- Heldt, E. (2020). [Contested EU Trade Governance: Transparency Conundrums in TTIP Negotiations](#). *Comparative European Politics* 18(2), pp. 215–32.
- Hooghe, L. & Marks, G. (2015). [Delegation and Pooling in International Organizations](#). *The Review of International Organizations* 10(3), pp. 305–28.
- Juncos, A. & Pomorska, K. (2006). [Playing the Brussels game: Strategic socialisation in the CFSP Council Working Groups](#). *European Integration online Papers (EloP)* 10.
- Juncos, A. & Pomorska, K. (2011). [Invisible and unaccountable? National Representatives and Council Officials in EU foreign policy](#). *Journal of European Public Policy* 18(8), pp. 1096–1114.
- Juncos, A. & Pomorska, K. (2021). [Contesting procedural norms](#): the impact of politicisation on European foreign policy cooperation. *European Security* 30(3), pp. 367–84.
- Juncos, A. & Pomorska, K. (2023a). [The Role of EEAS Chairs in Council Negotiations on Foreign and Security Policy Post-Lisbon](#). *Journal of Common Market Studies* (early view).
- Jupille, J. and Caporaso, J. (1998) 'States, Agency and Rules: The European Union in Global Environmental Politics', in Rhodes, C. (ed.) *The European Union in the World Community*, Boulder.
- Koenig, N. (2020). [Qualified Majority Voting in EU Foreign Policy: Mapping Preferences](#). Policy Brief Jacques Delors Center, Hertie School of Governance.
- König, N. (2022). [Towards QMV in EU Foreign Policy](#). Policy Brief Jacques Delors Center, Hertie School of Governance.
- Kotanidis, S. (2020). [Passerelle Clauses in the EU Treaties Opportunities for more flexible supranational decision-making](#). *European Parliament Research Service Study PE 659.420*.
- Kröger, S. & Loughran, T. (2022). [The Risks and Benefits of Differentiated Integration in the European Union as Perceived by Academic Experts](#). *Journal of Common Market Studies* 60(3), pp. 702–20.
- Kuhn, T. (2019). [Grand theories of European integration revisited: does identity politics shape the course of European integration?](#) *Journal of European Public Policy* 26(8), pp. 1213–30.
- Lijphart, A. (2012). [Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries](#). Yale University Press.
- Lovato, M. (2021). [The Internal Contestation of EU Foreign and Security Policy](#). *JOINT Research Papers* No. 1.
- Lovato, M., & Maurer, H. (2022). [Process and position power: a social relational research agenda about state power in negotiations](#). *Journal of European Public Policy* 29(12), pp. 1994–2006.
- Mattila, M. (2008). [Voting and Coalitions in the Council after the Enlargement](#). In Naurin, D. & Wallace, H. (eds). *Unveiling the Council of the European Union: Games Governments Play in Brussels*, Palgrave Studies in European Union Politics. (pp. 23-35). Palgrave Macmillan.
- Maurer, H. & Wright N. (2021a). [How much unity do you need?](#) Systemic contestation in EU foreign and security cooperation. *European Security* 30(3), pp. 385–401.
- Maurer, H. & Wright N. (2021b). [Still Governing in the Shadows?](#) Member States and the Political and Security Committee in the Post-Lisbon EU Foreign Policy Architecture. *Journal of Common Market Studies* 59(4), pp. 856–72.
- Maurer, H. & Wright N. (2022). [Foreign Policy](#). In Graziano, R. & Tosun, J. (eds). *Elgar Encyclopedia of European Union Public Policy*. Edgar Elgar.

- Maurer, H. & Morgenstern-Pomorski, J. (2018). [The quest for throughput legitimacy: the EEAS, EU delegations and the contested structures of European diplomacy](#). *Global Affairs* 4(2–3), pp. 305–16.
- Maurer, H., Whitman, R. & Wright, N. (2023). [The EU and the invasion of Ukraine: a collective responsibility to act?](#) *International Affairs* 99(1), pp. 219–38.
- Meissner, K. (2023). [How to Sanction International Wrongdoing?](#) *The Design of EU Restrictive Measures. The Review of International Organizations* 18(1), pp. 61–85.
- Meissner, K. & Portela, C. (2022). [Beyond Foreign Policy?](#) *EU Sanctions at the Intersection of Development, Trade, and CFSP. Politics and Governance* 10(1), pp. 1–4.
- Mintel, J. & von Ondarza, N. (2022). [More EU Decisions by Qualified Majority Voting – but How?](#) SWP Comment No. 61, October 2022.
- Montero, C. (2015). [Flexibility Mechanisms in the Lisbon Treaty](#). Study commissioned by the policy department for Citizen's Rights and Constitutional Affairs at the request of the European Parliament AFCO Committee.
- Müller, P., Pomorska, K. & Tonra, B. (2021). [The Domestic Challenge to EU Foreign Policy-Making: From Europeanisation to de-Europeanisation?](#) *Journal of European Integration* 43(5), pp. 519–34.
- Nicolaidis, K. & Youngs, R. (2023). [Reversing the Gaze: Can the EU Import Democracy from Others?](#) *Journal of Common Market Studies* (early view).
- Niemann, A. & Bretherton, Ch. (2013). [EU External Policy at the Crossroads: The Challenge of Actorness and Effectiveness](#). *International Relations* 27(3), pp. 261–75.
- Novak, S. (2013). [The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union](#). *Journal of Common Market Studies* 51(6), pp. 1091–1107.
- Nováky, N. (2021). [Qualified Majority Voting in EU Foreign Policy: Make It So](#). Martens Center Policy Brief.
- Nugent, N. (2017). [The Government and Politics of the European Union](#). 8<sup>th</sup> edition Bloomsbury Academic.
- Nuttall, S. (1992). [European Political Co-operation](#). Oxford University Press.
- Öberg, J. (2021). [Exit, Voice and Consensus – A Legal and Political Analysis of the Emergency Brake in EU Criminal Policy](#). *European Law Blog*.
- Orenstein, M. & Kelemen, D. (2017). [Trojan Horses in EU Foreign Policy](#). *Journal of Common Market Studies* 55(1), pp. 87–102.
- Politico (2018). [EU forces through refugee deal](#). 21 September 2015.
- Pruitt, D. (2002). *Strategy in Negotiation*. In Kremeniuk, V (ed.). *International negotiation: analysis, approaches, issues*. (pp. 85-96). Jossey-Bass.
- Radaelli, C. (2003). [The open method of coordination: a new governance architecture for the European Union?](#) *Swedish Institute for European Policy Studies* 2003:1.
- Raube, K. & Tonra, B. (2018). [From internal-input to external-output: a multi-tiered understanding of legitimacy in EU foreign policy](#). *Global Affairs* 4(2–3), pp. 241–51.
- Rhinard, M. & Sjöstedt, G. (2019). [The EU as a Global Actor: A new conceptualisation four decades after 'actorness'](#). *Swedish Institute of International Affairs Paper* 6/2019.
- Scharpf, F. (2009). [Legitimacy in the Multilevel European Polity](#). *European Political Science Review* 1(2), pp. 173–204.
- Schimmelfennig, F. & Winzen, T. (2023). [Cascading Opt-Outs? The Effect of the Euro and Migration Crises on Differentiated Integration in the European Union](#). *European Union Politics* 24(1): pp. 21–41.
- Schmidt, V. (2006). [Democracy in Europe: The EU and National Politics](#). Oxford University Press.
- Schmidt, V. (2009). [Re-Envisioning the European Union: Identity, Democracy, Economy](#). *JCMS: Journal of Common Market Studies* 47(s1), pp. 17–42.
- Schmidt, V. (2013). [Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'](#). *Political Studies* 61(1), pp. 2–22.
- Schmidt, V. (2020a). [Conceptualizing Legitimacy: Input, Output, and Throughput](#). In *Europe's Crisis of Legitimacy*. (pp. 25-55). Oxford University Press.
- Schmidt, V. (2020b). [Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone](#). Oxford University Press.

- Schunz, S. & Damro, C. (2020). [Expanding actorness to explain EU external engagement in originally internal policy areas](#). *Journal of European Public Policy* 27(1), pp. 122–40.
- Sjursen, H. (2011). [Not so intergovernmental after all?](#) On democracy and integration in European Foreign and Security Policy. *Journal of European Public Policy* 18(8), pp. 1078–95.
- Sjursen, H. (2018). [The legitimacy of European Union foreign policy](#). *Global Affairs* 4(2–3), pp. 253–64.
- Slaughter, A. (2017). [The Chessboard and the Web](#). *Strategies of Connection in a Networked World*. Yale University Press.
- Slaughter, A. (2018). [In the Digital Age, Foreign Policy Won't Be Decided by Presidents](#). *Wired UK*.
- Smit, T. (2020). [Increasing Member State Contributions to EU Civilian CSDP Missions](#). SIPRI.
- Smith, M. (2012). [Still Rooted in Maastricht: EU External Relations as a 'Third-generation Hybrid'](#). *Journal of European Integration* 34(7), pp. 699–715.
- Smith, M. (2018). [Does the Flag Still Follow Trade?](#) Agency, Politicization and External Opportunity Structures in the Post-Lisbon System of Eu Diplomacy. *The Hague Journal of Diplomacy* 13(1), pp. 41–56.
- The Guardian (2011). Germany blocks plans for Libya no-fly zone. 15 March 2011. Accessible at <https://www.theguardian.com/world/2011/mar/15/germany-blocks-libya-no-fly-zone>
- Tonra, B. (2011). [Democratic foundations of EU foreign policy: narratives and the myth of EU exceptionalism](#). *Journal of European Public Policy* 18(8), pp. 1190–1207.
- Tonra, B. (2018). [Legitimacy and EU security and defence policy: the chimera of a simulacrum](#). *Global Affairs* 4(2–3), pp. 265–75.
- Vanhoonaeker, S., Pomorska, K. & Maurer, H. (2011). [The Presidency in EU External Relations: Who is at the helm?](#) *Politique européenne* 35(3), pp. 139–64.
- Wallace, H. & Reh, C. (2014). An Institutional Anatomy and Five Policy Modes. In: Wallace, H., Pollack, M. & Young, A. (eds). *Policy-Making in the European Union*. Oxford University Press.
- Wessel, R. & Szépl, V. (2022). [The Implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting](#). Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee. PE 739.139.
- Wessel, R. & Van Vooren, B. (2013). [The EEAS's diplomatic dreams and the reality of European and international law](#). *Journal of European Public Policy* 20(9), pp. 1350–67.

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Common foreign and security policy (CFSP) has a particular status in the EU legal framework, part of which is the unanimity rule within the Council. This report analyses decision-making rules in CFSP from a 'cost of non-Europe' perspective. It identifies CFSP challenges and the extent to which they could be attributed to unanimity. This allows us to identify the current 'cost of unanimity'.

The report also analyses possible alternatives to unanimity decision-making in CFSP, such as a switch to qualified majority voting (QMV), including their costs and benefits. The study develops several policy options, including options within the current legal framework, options requiring Treaty change, and options requiring a departure from the intergovernmentalism in CFSP.

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