

EU Institutional Reform and Enlargement: Balancing efficiency and national interests

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European Union (EU) institutional reforms, especially with regard to voting procedures, remain a topic of high interest for the EU policy community. While the Lisbon Treaty in 2009 moved decision-making procedures mainly towards qualified majority voting (QMV), key domains of critical decisions remained within the realm of unanimity. This includes decisions on common foreign and security policy, on the EU budget, and on the enlargement process. Generally, Member States are hesitant about any kind of institutional or treaty reform. There is a belief that the Treaties are flexible enough, and that the decision-making process encourages unity, consistent cooperation, and a unified EU position. However, voting procedure reforms have regained traction with regard to the acceleration of enlargement processes.

The concern is that, within a growing Union, Member State alliances will likely become more present and well-defined, potentially leading to fragmentation and larger lines of separation in policy choices and priorities among EU Member States.¹ The fragmentation of policy priorities

and choices can lead to a less efficient decision-making process – longer consensus building within the Council, compromises for General Approaches that are made too vague or too broad, etc. It is important to note that some degree of iterative bargaining and divergence is, inevitably, part of the EU political process. There will always be disagreements, different priorities between Member States on how to approach any given topic.

However, fragmentation of policy choices inside the EU becomes more challenging in fields such as the Common Foreign Security Policy (CFSP) and Common Security and Defence Policy (CSDP), as well as rule of law infringement procedures under Article 7 TEU. Intrinsically, these should be fields, where most Member States align. Furthermore, these are also fields which have a temporal aspect.

The provision of aid, or the introduction of sanctions, or determining a breach of the rule of law are all somewhat time-sensitive issues – they require efficiency and quickness, and a common compass.

A precedent within the Council has shown that the unanimity requirement can be abused to gain political leverage in, for example, the

1 Costa O. et al., "Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century" Report of the Franco-German Working Group on EU institutional reform, Institut Delors, September 2023, p. 23 <<https://institutdelors.eu/wp-content/uploads/2020/11/Paper-EU-reform.pdf>>

unfreezing of EU structural funds, as was in the case of Hungary's position on EU aid to Ukraine. It has to be understood that any argument in favour of institutional reform should not be based on the idea that enlargement somehow poses a danger to the EU's processes because candidate countries might try to gain political leverage by delaying the process. The issue is that enlargement simply exacerbates an issue that was already present before.

Any discussion concerning institutional reform in the context of enlargement should be prefaced by the fact that the reforms and Treaty change should not be dependent on enlargement, nor should enlargement be dependent on Treaty reform and institutional reforms. Progress on these two questions should not create mutual impediments. However, it is also important to note that these processes are inextrinsically linked. The consequences of one will inevitably affect the other.

Moving towards QMV within the confines of the Treaties

The fact is Member States have already recognised deficiencies within unanimity decision-making. Germany and Slovenia introduced a non-paper to the General Affairs Working Group in the Council of the European Union on January 29, 2024. The non-paper proposed to introduce QMV within intermediate stages of EU accession negotiations – the opening of negotiation clusters. Therefore, it seems that Member States have not completely ruled out the idea of moving away from unanimity, but rather have taken a careful and prudent approach. Undoubtedly, this is also impacted by the geopolitical dimension of the enlargement process.

The Baltic States, as some of the smaller EU Member States, have had a track record of defending the unanimity requirement. The ability to veto is a way to ensure that our interests are not overshadowed by those of bigger Member States, who could overrule Baltic interests. It is important to note that QMV has previously led to unfavourable outcomes for the Baltic States.

For example, in the case of the Mobility Package, where, regardless of the opposition of 9 Eastern European Member States, who were most negatively impacted by it, a qualified majority was still reached.¹ Although, after pursuing legal action within the Court of Justice of the European Union (CJEU), the most contentious requirements of the Mobility Package were abolished by the CJEU, labeling it as discriminatory.

However, enlargement might offer new strategic approaches by which to ensure the representation of the Baltic States even in QMV processes.

The Baltic States are perfectly equipped to bridge the gap between Central, Eastern and Northern Europe. Establishing key strategic partnerships with Member States such as Poland, Sweden, Finland, Bulgaria, Romania, and especially Ukraine and Moldova, once they join the EU, can shift the balance in QMV representation.

Inevitably, Ukraine's accession to the EU will shift the scales of QMV more towards the East. Furthermore, Ukraine is very likely to adhere to similar foreign policy choices as the Baltic States.

¹ The disputed provision of the Mobility Package was a requirement that trucks needed to be returned to their country of registration every eight weeks, disproportionately affecting Central and Eastern European Member States.

In that regard, if key strategic positions can be aligned with EU candidate countries, the use of *passerelle* clauses within the Treaties to move parts of CFSP and CSDP towards QMV might not pose as much of a danger to Baltic States' national interest representation as it could seem at first.

Moving towards QMV through Treaty reform

Any discussion about Treaty reform should be prefaced by the fact that the Treaties do not need any substantive reform, and indeed discussion about competences should be avoided. This poses the risk of opening up a Pandora's box of national interests, potentially endangering the efficient functioning of the Union. Any kind of reform should be strictly limited to amendments of a procedural nature – mainly voting requirements.

However, if there are the *passerelle* clauses, why would a Treaty reform even be necessary? First, the CFSP specific *passerelle* clause is limited in its scope: a) it does not apply to decisions with military or defence implications; and b) any Member State can object to a decision being taken by QMV. Therefore, there still exists a veto power of Member States, and at any point a decision can be brought back from QMV to unanimity.

Second, *passerelle* clauses cannot be used to alter the Article 7 TEU unanimity requirement – another heavily critiqued Union mechanism with no 'bite'.

Third, Treaty reform lets us introduce a middle-ground rather than always having to pick between a qualified majority or unanimity.

Within the Treaties, there already exists a *super qualified majority* - 72% of the Member States also comprising 65% of the EU population – as opposed to the 55% of Member States comprising 65% of the total EU population that qualified majority hinges on. A Treaty reform also would allow other majorities, such as 3/4th's of the Member States or 4/5th's of the Member States. The fact is that Member States do not want to move towards qualified majority because it is a relatively easy majority to reach. Treaty reform can provide alternatives that ensure efficiency and flexibility, yet still ensure necessary representation of national interests..

Baltic Initiative on European Reform

The goal of Baltic Initiative on European Reform is to promote debate on EU reform and enlargement in the Baltic States and to convene civil society, experts, and policy makers to discuss the goals of EU enlargement and reform and their implications for democracy and rule of law.

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