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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
COUNCIL, THE EUROPEAN PARLIAMENT AND THE COUNCIL  
A stronger global actor: a more efficient decision-making for EU Common  
Foreign and Security Policy

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Delegations will find attached document COM(2018) 647 final.

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Brussels, 12.9.2018  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN COUNCIL,  
THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**A stronger global actor: a more efficient decision-making for EU Common Foreign and  
Security Policy**

## 1. Introduction

Over the past 60 years, the steps taken towards European integration have created a common destiny for the citizens of the Union. The question Europe faces is a simple one: whether Europeans will decide on their common destiny, or whether that destiny will be decided by others. Whether the European Union wants to be a pillar of the emerging multipolar global order or whether it will resign itself to being a pawn.

The challenges that Europe faces today will not go away. Global competition will harden. The pace of technological change will increase. Geopolitical instability will grow. The effects of climate change will be felt. Demographic trends mean that migration to the EU will continue.

The 2017 Rome Declaration<sup>1</sup>, adopted on the occasion of 60<sup>th</sup> anniversary of the Treaty of Rome, recognised that a stronger European Union was a necessity. The Leaders emphasised in particular that the EU should become a stronger global actor. It must be better able to shape global events and better equipped to shoulder international responsibilities. The European Union must increase its capacity to *'act credibly on the global stage'* (*"Weltpolitikfähigkeit"*).<sup>2</sup> The present Communication is a contribution to the debate amongst the Leaders that will be pursued at their meeting in Sibiu on 9 May 2019.

In the complex, connected and contested world<sup>3</sup> of today, the EU must protect its citizens, promote its values and interests, support the rules-based international order and export stability to its neighbourhood and beyond. The EU must also be able to respond to the expectations of third countries, international organisations and other international actors for it to play a key role in tackling regional and global challenges.

No Member State can meet these challenges or seize these opportunities alone. The EU and its Member States must pool their strength to promote shared interests and values.

In his State of the Union speech of 2018, President Juncker identified a number of policies that must be pursued to this end. The EU must work more closely still with its partners across the globe. It should step up its partnership with Africa, notably by launching an Alliance for sustainable investment and jobs. The EU must be able to stand on its own two feet. For instance, it must strengthen the international role of the Euro. The EU must also speak with a single, clear and strong voice in response to international events.

To achieve these objectives and become a stronger global actor, the EU must equip itself with the necessary instruments, notably by making its decision-making more efficient.

To this end, in his State of the Union speech of 2017, President Juncker suggested *'looking at which foreign policy decisions could be moved from unanimity to qualified majority voting'*.<sup>4</sup> This can be done on the basis of the Treaties as they stand. The Meseberg Declaration of June 2018 on Renewing Europe's promises of security and prosperity, by German Chancellor

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<sup>1</sup> [Rome Declaration](#) of the leaders of 27 member states and of the European Council, the European Parliament and the European Commission.

<sup>2</sup> Notion coined by President Juncker in his [speech](#) at the 54th Munich Security Conference.

<sup>3</sup> [Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European's Foreign and Security Policy](#), from June 2017.

<sup>4</sup> President Juncker [2017 State of the Union address](#).

Angela Merkel and French President Emmanuel Macron, addressed the same matter. It called to *'look into new ways of increasing the speed and effectiveness of the EU's decision making in our Common Foreign and Security Policy'* and *'explore possibilities of using majority vote in the field of the Common Foreign and Security Policy in the framework of a broader debate on majority vote regarding EU policies'*.<sup>5</sup>

The discussion is a longstanding one. The EU has moved gradually from unanimity to qualified majority voting many times in its history. First introduced by the Single European Act<sup>6</sup>, today qualified majority is the standard voting rule for EU decision-making, including in the area of Justice and Home affairs. The reason for replacing unanimity by qualified majority is simple, compelling and has always been the same. Member States have recognised that when a certain level of ambition is sought in particular policy area, there comes a moment when **the unanimity rule slows down progress and in some cases prevents the EU** from adjusting to changing realities. In this sense, every move towards qualified majority has been a major step forward for the EU.

Based on a **culture of compromise**, qualified majority voting opens up more space for discussion and pragmatic outcomes that reflect the interests of all. Flexible, efficient and quick decision-making has thus allowed the **Union to become a global reference and standard setter** in policy areas such as environmental and consumer protection, data protection as well as free and fair trade.

The EU is becoming an increasingly important global player and is considered by many worldwide as a champion of universal values. From facilitating the normalisation of the relations between Belgrade and Pristina, responding to the violation of international law by the Russian Federation on the Crimean peninsula and in Eastern Ukraine, to initiating and brokering the negotiations related to the Iranian nuclear programme, the Union has consistently supported peace and prosperity in its neighbourhood and beyond.

Nevertheless, more qualified majority voting would benefit the Common Foreign and Security Policy. This Communication sets out the rationale for more efficient decision-making in some areas of the Common Foreign and Security Policy, explores the possibilities to do so that exist in the Treaty on European Union and identifies **concrete and achievable areas where the Council could act by qualified majority** rather than cling to unanimity. The specificities of foreign policy are reflected in the Treaties. Tailor-made safeguards exist and would continue to apply. At a later stage, the Commission could explore how qualified majority voting could be used to further strengthen the Union's relations with third countries.

## **2. The case for more qualified majority voting in Common Foreign and Security Policy**

In the Common Foreign and Security Policy, most EU decisions are adopted by unanimity. Normally, this has not prevented the Union from **being active and taking strong positions** on foreign policy matters. But it has increasingly affected the **speed and ability** of the EU to act in the global arena. In international politics, time is of essence and the credibility of an

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<sup>5</sup> [Meseberg Declaration](#) by French President Emmanuel Macron and German Chancellor Angela Merkel. During the European Convention various Member States had already recognised the importance of changing the direction and introducing qualified majority voting. This was, in particular, the position of France and Germany (Réf. Contribution franco-allemande à la Convention européenne sur l'architecture institutionnelle de l'Union du 15 janvier 2003, faite à Paris et à Berlin; Contribution de M. Dominique de Villepin et M. Joschka Fischer).

<sup>6</sup> For more information, [Building Europe through the Treaties](#) in the EUR-lex summaries of EU legislation.

international actor hinges on its ability to react in a quick and coherent way to international crises and events. Likewise, the strength, effectiveness and impact of a global actor depend on its ability to act consistently and efficiently on the international scene and in global fora.

Since the Treaty of Maastricht of 1992, where Member States empowered the Union for the first time to act in foreign policy and security matters, considerable progress has been achieved through the substantial development of the EU's Common Foreign and Security Policy and Common Security and Defence Policy. Nevertheless, there are still instances where the EU is unable to reach common positions, or they are not sufficiently solid or sufficiently fast (see section 3).

Those instances have a real political cost for the Union and its Member States: EU institutions are precluded from acting decisively, Member States that are more active internationally are limited to representing their individual positions rather than carrying the combined weight of 28, and Member States who do not have their own seat at the negotiating table are unable to exercise direct influence on the matter at stake.

The fact that such instances still occur demonstrates that the unanimity rule prevents the Union from achieving its full potential in foreign policy. In a 2025 perspective, overcoming these limits will be essential in view of the possible enlargement of the EU. The EU must be stronger and more solid, before it can be bigger.<sup>7</sup>

In the future, therefore, certain Common Foreign and Security Policy decisions **should be taken by qualified majority**. The use of qualified majority would make the Union a stronger, more effective and more credible international actor, as it would make it easier for the Union:

- To act on the global scene on the basis **of robust and consistent positions**;
- To react with **speed and efficiency** to pressing foreign policy challenges, both where a new position needs to be established and in the implementation of an agreed strategy;
- To strengthen **the resilience of the EU** by shielding **Member States** from targeted pressure by third countries that try to divide the EU.

**Taken together, this would help the Union to pull its weight acting in concert as more than the sum of its parts. Experience from other policy areas where qualified majority is the rule shows that qualified majority fosters common solutions.** Practice has shown that, where qualified majority applies, decisions are, in the vast majority cases, de facto taken by consensus. The prospect of a vote by qualified majority is a powerful catalyst to engage all actors in finding compromises, **an outcome acceptable to all** through building effective consensus, **and to achieve unity**. The pursuit of agreement means greater ownership of the decisions taken, which should be implemented in '*a spirit of loyalty and mutual solidarity*'.<sup>8</sup>

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<sup>7</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans", COM (2018) 65 final.

<sup>8</sup> Article 24(3) TEU.

Moreover, reflecting the specificities of Common Foreign and Security Policy, and in order to protect core interests and prerogatives of Member States, the Treaty foresees **important safeguards** in case of use of qualified majority voting (see section 4).

**Given the EU's culture of compromise**, and taking into account such safeguards, qualified majority would function as well in Common Foreign and Security Policy as it has in other areas of EU policy.

#### **The example of Trade Policy**

**Trade policy** is an area where qualified majority applies.<sup>9</sup> It is an EU policy where the Council is frequently called upon to take decisions. Yet, despite the existence of diverging national economic interests, up to the present day the Council has seldom proceeded to a formal vote. Member States always preferred to decide **by consensus**. What has prevailed is the common interest of the Union, which is more than the sum of Member States interests put together. And this has resulted in the EU being able to fulfil its potential on world trade.

**More qualified majority voting will not in itself solve all the problems facing the Common Foreign and Security Policy.** Other challenges remain, such as fostering greater convergence among Member States' interests and the emergence of a common foreign policy culture. This is the core objective of the EU Global Strategy on Foreign and Security Policy, welcomed by all Member States. Over time, however, building EU positions through the pragmatic process that qualify majority voting incentivises, can also help to progressively foster a common sense of purpose and interests that all Member States are willing to pursue. There is also a challenge in ensuring that Member States effectively implement and defend the positions agreed within the Council in their bilateral relations with third countries. Member States' ambitions as regards the Common Foreign and Security Policy should also be reflected in the budgetary capacity of the Union in the next Multiannual Financial Framework.

### **3. Examples where the unanimity rule weakens the EU's Common Foreign and Security Policy**

Many important decisions have been taken in recent years in the Common Foreign and Security Policy. In addition, the Union has used its other external policy instruments to promote its values throughout the world, relying on qualified majority voting.

#### **Examples of EU acts promoting its values in its external relations governed by qualified majority voting**

- Trade preferences are granted to third countries **under the Generalised System of Preferences**. Countries failing to respect basic human rights may see these preferences suspended, with important economic consequences. The EU has suspended or withdrawn trade preferences under this system from Myanmar, Belarus and Sri Lanka after serious violations of human rights.
- The EU legal frameworks both **on export controls for instruments used in torture and for the death penalty and on dual use goods** are adopted by qualified majority.

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<sup>9</sup> With very limited and conditional exceptions in Article 218 (8) TFEU, first sub-paragraph.

There have been examples where due to the unanimity practice, EU decisions on important Common Foreign and Security Policy issues, in particular on human rights, EU sanctions or key regions of EU interest, were blocked, taken too slowly or diluted. **These cases demonstrate the need to increase the Union's efficiency in its foreign policy.**

**Cases where unanimity prevented or substantially delayed or negatively impacted on the substance of Common Foreign and Security Policy decisions**

*Human Rights*

One of the Union's key objectives is to promote human rights. 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. This has happened both in the framework of the Union's bilateral relations with third countries or within international organisations. Each of these cases has weakened the Union's ability to promote the respect of human rights internationally, impacted negatively on its credibility and has prevented it from delivering on its objectives.

- The United Nations Human Rights Council in Geneva is the core global forum for discussing human rights. Its program is structured along 10 items. The most salient country-specific human right situations are discussed under Item 4.

In June 2017, the EU was unable **for the first time** to deliver an Item 4 Statement at the United Nations Human Rights Council. This resulted from objections from a limited number of Member States, which did not question the substance of the assessments made. The Member States opposed express references to two third countries that all other Member States wanted to mention due to their Human Rights record. Failure to end this stalemate led to the EU voice being silenced.

- In September 2017, a Member State substantially delayed the adoption of the EU Strategic Work plan for the UN Human Rights Council and the EU Item 4 Statement due to a specific issue with a third State. In October, the same Member State blocked the draft EU Statement to be delivered at the UN General Assembly Third Committee, ultimately forcing all others to accept what was generally deemed a disproportionate reference to a specific case both in substance and in length when compared to all other references in the Statement.
- In February 2018, a number of isolated objections from a limited number of Member States substantially delayed and ultimately forced all others to accept to water down the adoption of the yearly annual priorities on Human Rights to be pursued by the EU in United Nations fora.
- Such difficulties have also been encountered in the EU's bilateral relations with third countries. Against the backdrop of a new law severely restricting the space for Non-Governmental Organisations in Egypt, a limited number of Member States blocked and ultimately substantially went against the wish of all other Member States to include clear language in the draft EU Partnership Priorities with Egypt as regards respect for Human Rights and Civil Society. As a result, the framework of the bilateral relations with Egypt could not be renewed in time and was absent in early 2017.

### *Other EU foreign policy statements*

- In July 2016, the EU **was unable to swiftly support** the award by an arbitral tribunal under the United Nations Convention on the Law of the Sea on the South China Sea due to the objection of a limited number of Member States, unrelated to the award in question. Following several days of intense negotiations, a statement was ultimately agreed. However, **while the EU was able to belatedly call for the respect of international law, it could not call for the implementation of the award.** This was particularly problematic in view of the EU-China and the Asia Europe Meeting (ASEM) Summits that were taking place in parallel.
- In December 2017 and in May 2018, the requirement of unanimity on every aspect of comprehensive drafts **prevented the EU from issuing unified statements** on developments regarding Jerusalem, despite continued agreement of Member States on the long-standing and well-established position on the status of Jerusalem in accordance with international law.

In both cases, the Union was unable to react in a timely and robust manner to an international development, on which its position was clear and well-established.

### *EU Sanctions*

- In February 2017, a Member State **blocked the renewal of the arms embargo against Belarus** until all other Member States finally agreed to exempt a certain category of small arms to avoid the embargo expiring altogether. One year later, the same Member State conditioned the renewal to the expansion of the exception to an additional category of arms, which again all other Member States ultimately accepted for the same reason.
- In the summer of 2017, a Member State **blocked the adoption of targeted EU restrictive measures against Venezuela** in response to domestic political developments that the EU had earlier indicated would, if materialised, lead to their adoption. The restrictive measures in question were ultimately adopted only in November 2017 following a further substantial deterioration of the situation on the ground.

Again, these examples demonstrate that unanimous voting in the Council hampers the ability of the European Union to react quickly and firmly to international developments. While the establishment of sanctions regimes under the Common Foreign and Security Policy is decided by unanimity, the EU counter-sanctions regime, also called the Blocking Statute<sup>10</sup> is governed by qualified majority, enabling it to be updated in response to international events in an expeditious way.

### *Civilian Common Security and Defence Policy missions*

- More recently, in 2018, **the extension of a capacity building mission in the Sahel**

<sup>10</sup> Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. OJ L 309, 29.11.1996, p. 1–6.



**was blocked** by one Member State until another Member State dropped its reservations on a separate mission to Iraq. Regrettably, this was not the first case of a Member State opposing or delaying moving forward as regards one specific Common Security and Defence Policy file due to another Member State doing likewise on another one. Such situations have never prevented the EU from ultimately moving forward but have – in some cases – delayed the adoption of the necessary decisions.

The delays in decision-making **due to unanimity** go beyond the decisions to launch and establish Civilian Common Security and Defence Policy missions, but also cover aspects of practical implementation, such as the endorsement of the mandatory Six-Monthly Reports that each Civilian Common Security and Defence Policy mission has to submit regularly to the Council.

These and other similar situations were not caused by unbridgeable differences in long-term interests, but because the ability to veto allowed Member States to block the decision-making process for reasons not always related to the specific issue at stake and discouraged them from seeking a constructive compromise.

It is important to note that in most of the examples given above, due to the hard work of all involved parties, solutions were often found. However, these solutions came at a price. The protracted discussions due to the use of the 'veto' were often **divisive** and damaged the EU's influence and cohesiveness.

#### **4. The existing decision-making framework in Common Foreign and Security Policy**

The Treaty on European Union sets the general rule that the Council adopts Common Foreign and Security Policy decisions **by unanimity** (Articles 24 (1) and 31(1) of the Treaty).<sup>11</sup> It has remained the rule since the Treaty of Maastricht. At the same time, **the qualified majority rule exists and is already applicable in certain instances** in the Common Foreign and Security Policy.

##### **4.1. While unanimity is the general rule for Common Foreign and Security Policy decision-making...**

The rule of unanimity in Common Foreign and Security Policy stands in contrast with other areas of EU external action (such as the Union's policies on development and international cooperation or trade) where the general rule is that decisions are taken by qualified majority.<sup>12</sup>

Reflecting the difficulties to which this rule can lead, the Treaty on European Union provides for a rule that aims to facilitate the adoption of decisions by unanimity, giving a margin of flexibility that supports enhanced effectiveness in view of the adoption of decisions.

The so-called '**constructive abstention**' (Article 31(1) 2<sup>nd</sup> paragraph TEU) foresees the right for a Member State to abstain from a unanimous vote in the Common Foreign and Security

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<sup>11</sup> The other areas where decisions are adopted by unanimity are taxation, social security or social protection, the accession of new countries to the EU and operational police cooperation.

<sup>12</sup> While other areas of EU external action are under the provisions of the Treaty on the Functioning of the European Union, the Common Foreign and Security Policy is under the provisions of the Treaty on European Union.

Policy and to qualify its abstention by making a formal declaration. The Member State will not be obliged to apply the decision. However, in a spirit of solidarity, the Member State is obliged to refrain from actions that would impede Union's efforts to implement the decision in question.

So far, constructive abstention has been used only once, by a Member State when the EU decided in 2008<sup>13</sup> to set up a Civilian Common Security and Defence Policy mission for Kosovo\*.

#### **Reminder - voting procedures in the Council**

**Simple majority (Article 238 TFEU):** A simple majority is 15 out of 28 Member States.

**Qualified majority (Article 16 TEU and Article 238(3) TFEU):** Qualified majority post-2014 is reached if 55% of Member States vote in favour, which in practice means 16 out of 28, and if Member States in favour represent at least 65 % of the total EU population. Abstention counts as a vote against.

**Unanimity (Article 238 (4) TFEU):** All Member States have to agree before adopting a decision. Abstention does not prevent the adoption of decisions taken by the Council acting unanimously.

#### **4.2. ...qualified majority voting is foreseen and already applicable in certain instances for Common Foreign and Security Policy...**

The European Council declared already in 1990 that qualified majority voting should be considered for the implementation of previously agreed Common Foreign and Security Policies.<sup>14</sup> With this objective in mind, Member States agreed, through successive treaty amendments, to a gradual move towards decision-making by qualified majority. Article 31(2) TEU **has great potential, which, so far, has remained untapped.**

**Article 31(2) TEU foresees the Council deciding by qualified majority on Common Foreign and Security Policy matters in the following cases<sup>15</sup>:**

Cases in which Article 31(2) TEU *enables* the use of qualified majority voting

- *'a Union action or position on the basis of a decision of the European Council*

<sup>13</sup> Council Joint Action 2008/124/CFSP of 4 February 2008, OJ L 42, 16.2.2008, p. 92–98.

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

<sup>14</sup> See Council Conclusions in the preparation of the Intergovernmental Conference preceding the conclusion of the Maastricht Treaty [http://www.consilium.europa.eu/media/20554/1990\\_october\\_rome\\_eng.pdf](http://www.consilium.europa.eu/media/20554/1990_october_rome_eng.pdf).

<sup>15</sup> Other articles where decisions are to be adopted by qualified majority under the Treaty on European Union: Article 41(3) TEU, Article 45(2) TEU, Article 46(2) TEU. Recently, on the basis of Article 46(2) TEU, a large majority of Member States have decided to move European cooperation on defence forward by adopting a decision by qualified majority voting for the establishment of the Permanent Structured Cooperation in security and defence. The establishment of such type of cooperation will enhance the EU's capacity as an international security partner, and maximise the effectiveness of Member States defence spending.

*relating to the Union's strategic interests and objectives as referred to in Article 22 (1) TEU*'.

This provision offers the European Council the possibility to adopt a unanimous Decision, setting out the EU's strategic interests and objectives in one or more specific areas of Common Foreign and Security Policy. Once the European Council sets the strategic objectives and principles of the envisaged action or position, the Council would then adopt by qualified majority all decisions implementing the European Council's strategic decisions.

- *'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'*.

This provision allows the European Council (either on its own initiative or further to a proposal by the High Representative) to unanimously request the High Representative to submit a proposal to the Council for a decision defining a Union action or position. In such cases, the Council would decide by qualified majority. The potential content of such request of the European Council is not defined in the Treaties and could thus encompass all areas of Common Foreign and Security Policy.

Cases in which Article 31(2) TEU **requires** the use of qualified majority voting

- *'implementation of a decision defining a Union action or position'*.

This concerns the situation following the adoption by the Council of an initial action or position by unanimity, it would adopt all further implementing decisions by qualified majority.

- *'appointment of a special representative (upon a proposal by the High Representative/Vice-President) pursuant to Article 33 TEU'*.

The special representatives have a mandate in relation to particular Common Foreign and Security Policy issues. Qualified majority has worked well in practice leading to speedy decisions, without even having to resort to formal voting. As in other areas of qualified majority decision-making, the appointment of special representatives has always been decided by consensus.

The TEU establishes **two important safeguards** that frame the use of qualified majority voting in Common Foreign and Security Policy matters.

#### **Safeguards for the use of qualified majority in Common Foreign and Security Policy**

- Article 31(2) TEU foresees an **'emergency break'** that allows a Member State to **object to a decision being taken by qualified majority for 'vital and stated reasons of national policy'**, in which case a vote will not take place. Should consultations between the High Representative and the Member State in question not succeed, the Council of the EU may by qualified majority request to refer the matter to the European Council for a decision **by unanimity**.
- Article 31(4) TEU **excludes decisions having military or defence implications** from

the scope of Article 31(2) TEU, thus ensuring that decision with such implications will not be taken by qualified majority.

#### **4.3. ...and the use of qualified majority in Common Foreign and Security Policy could be extended further**

The Lisbon Treaty introduced the **possibility to broaden further the use of qualified majority voting**. Based on the so-called ‘**passerelle clause**’ set out in **Article 31(3) TEU**, the European Council may authorise by unanimity the Council to act by qualified majority in other Common Foreign and Security Policy cases than those foreseen in Article 31(2) TEU.

Thus, Member States clearly foresaw that for the European Union to become a truly effective and efficient actor in foreign and security affairs, it may be appropriate for the Council to act by qualified majority beyond the specific cases contemplated in Article 31(2) TEU.

Both safeguards described in Section 4.2 will continue to apply after the ‘passerelle’ of Article 31(3) TEU has been used.

#### **5. Concrete proposals to improve Common Foreign and Security Policy decision-making through qualified majority voting**

The Commission therefore invites Member States to tap into the potential of the TEU as regards qualified majority on Common Foreign and Security Policy matters. It does not propose that the Council act by qualified majority in all areas of the Common Foreign and Security Policy. Instead, the focus should be on areas where **qualified majority voting would clearly make a positive difference**.

The Treaty rules on ‘**constructive abstention**’ under Article 31(1) TEU and on the use of qualified majority voting under Article 31(2) TEU have great potential. These tools, had they been used, would have allowed some of the situations described in section 3 to be addressed. The Commission therefore encourages the Member States in the Council **to exploit this potential in its full extent by applying the Treaties in letter and spirit**.

In this context, Council Conclusions are a useful tool to agree politically on EU positions on specific foreign policy issues. However, the Council should refrain from agreeing positions by common accord<sup>16</sup> on Common Foreign and Security Policy and other related matters, through parallel or informal proceedings, when it could be possible to use the tools provided for in the Treaty. This would enable to use the potential of Article 31(1), Article 31(2) and Article 31(3) TEU.

Furthermore, where a matter relates not to the Common Foreign and Security Policy but to the external aspects of a policy governed by the Treaty on the Functioning of the European Union, the corresponding legal bases should be used for taking decisions, thereby not applying the unanimity rule. The potential of the wide-spread network of EU Delegation across the world and at international organisation should be used to the full.<sup>17</sup>

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<sup>16</sup> Common accord is a practice not foreseen by the Treaties of all the Member States explicitly agreeing without a possibility of abstention.

<sup>17</sup> Article 221 TFEU.

## **Exploiting the potential of existing qualified majority voting provisions under Article 31(2) TEU**

The Council has already used qualified majority voting when amending listings under EU restrictive measures (persons and entities subject to an asset freeze and travel ban), essentially in cases that reflected changes to international sanctions adopted by the United Nations and occasionally for the amendment of listings under autonomous EU sanctions regime where the amendment itself was not deemed sensitive by the Council of the EU.<sup>18</sup> The Commission suggests that, the Council **consistently uses qualified majority voting for amending the listings of all EU sanctions regimes** – including autonomous measures – in accordance with the procedures under Article 31(2) TEU (third indent).

The European Council has the prerogative of identifying strategic interests and objectives of the EU's Common Foreign and Security Policy, including thematically and as regards relations with a specific country or region.<sup>19</sup> The Commission suggests that the European Council adopts decisions setting out thematic or geographical strategies, priorities or guidelines, setting out the scope and conditions under which the Council can act by qualified majority voting to implement them, as per Article 31(2) TEU (first indent).

While exploiting the potential of existing qualified majority provisions under 31(2) TEU would represent a significant improvement, it would not cater for many of the identified shortcomings. In order to address them, the Commission suggests also exploring more structural solutions, **enhancing Common Foreign and Security Policy decision-making under Article 31(3) of the TEU by using the ‘passerelle clause’**.

The Commission **has identified three** specific areas that would immediately benefit from the application of the ‘passerelle’ clause provided for in Article 31(3) TEU.

### **5.1. EU positions on Human Rights in multilateral fora**

The universality and indivisibility of human rights is one of the core principles that have inspired the creation, development and enlargement of the EU and guide its external actions.<sup>20</sup> Political unity on human rights is critical for maintaining the EU's international credibility and soft power, within and beyond multilateral fora.

When EU positions on Human Rights to be taken in international fora are debated in the context of the Common Foreign and Security Policy, they are currently agreed by common accord, normally in the form of Council Conclusions. Moving to qualified majority voting will enable **more efficient and timely EU action**. Situations as the one in June 2017, when the Union was unable to make a statement on Item 4 (Human rights situations requiring the attention of the Council) at the United Nations Human Rights Council **would no longer be possible**.

The Commission therefore suggests that **the European Council unanimously adopts a decision based on Article 31(3) TEU providing that EU positions on human rights in international fora are adopted by qualified majority in the form of Council decisions**.

<sup>18</sup> See Council Implementing Decision (CFSP) 2018/1086 of 30 July 2018 concerning restrictive measures in view of the situation in Libya, OJ L 194, 31.7.2018, p. 150–151.

<sup>19</sup> Articles 22(1), 22(2) and 26(1) TEU.

<sup>20</sup> As foreseen by Article 21 TEU.

## 5.2. Adoption and amendment of EU sanction regimes

Sanctions policy is one of the EU's strongest foreign and security policy tools, as it leverages the Union's significant economic power to promote its external objectives. Unity of action is essential in order to preserve the level playing field in the functioning of the internal market and the efficiency of the common rules under Schengen.

Over the last years, the use of restrictive measures by the EU has increased in frequency and intensity, proving the EU's willingness to react, deter and influence developments through political and economic pressure. As in the case of trade policy where qualified majority voting applies, defining a level of political ambition and identifying an appropriate balance between the economic interests of the Member States is at the core of any sanctions negotiation. The ability of the EU to act decisively in its geopolitical interest, more often than not as part of an international mobilisation against severe violations of international law, is in the common interest of all Member States.

The Commission therefore suggests that **the European Council unanimously adopts a decision based on Article 31(3) TEU providing that decisions establishing a sanctions regime are adopted by qualified majority voting by the Council.**<sup>21</sup>

## 5.3. Civilian Common Security and Defence Policy missions

Civilian Common Security and Defence Policy missions play an important role in the EU's global engagement for peace and security. To date, when launching and deciding on the implementation of civilian missions, the Council acts by unanimity.<sup>22</sup>

In a dynamic international environment, the EU must be able to deploy its toolbox quickly to respond and engage in crisis or post-crisis environments in a swift and visible manner in direct support of national authorities and/or local communities. As the EU seeks to export stability to its neighbourhood, the number of civilian missions is likely to increase. Given the fluid environments in which such missions typically operate once established, they require effective and agile management.

The Commission therefore suggests that **the European Council unanimously adopts a decision based on Article 31(3) of the TEU providing that all decisions regarding Civilian Common Security and Defence Policy missions are adopted by qualified majority voting by the Council.**

To start with, all Rule of Law Capacity Building and Security Sector Reform missions should be considered in particular, as they usually operate in tandem with other EU instruments governed by qualified majority voting in the Council.

In any case, the European Council could **decide that once established by unanimity, all decisions regarding the implementation of Civilian Common Security and Defence Policy missions will be taken by the Council by qualified majority voting.**<sup>23</sup>

<sup>21</sup> Beyond the possibility mentioned earlier in the first box of Section 5.

<sup>22</sup> On the basis of Articles 42(4) TEU, Article 43(2) TEU and Article 28 TEU.

<sup>23</sup> Including decisions taken by delegated authority.

## 6. Conclusion

The EU Common Foreign and Security Policy has been strengthened considerably since its inception. Its achievements, for instance in the Western Balkans, to support Ukraine and in relation to Iran's nuclear programme are significant. The EU's partners in the world expect it to stand up for its values and for the international rules based multilateral order.

There is a growing realisation that the challenging international landscape we face requires a "change of gear" in the Common Foreign and Security Policy. The EU must become a stronger global actor, so as to be able to continue to shape our future, uphold our shared sovereignty and exercise a positive international influence.

The efficiency of decision-making can be improved in some areas of the Common Foreign and Security Policy. Doing so would help the European Union to stand on its own two feet.

For this reason, the Commission advocates tapping into the potential of the Treaty on European Union by using the full range of possibilities within the Common Foreign and Security Policy, in particular by increasing the use of qualified majority voting.

In order to contribute to building a more united, stronger and more democratic Union in a 2025 perspective, the European Commission invites Leaders at the meeting on 9 May 2019 in **Sibiu to endorse the proposals contained in this Communication**. The Council should act by qualified majority in the following three areas of Common Foreign and Security Policy:

- As regards human rights issues in multilateral fora;
- As regards sanctions policy;
- As regards civilian Common Foreign and Security Policy missions.