



Commentary



HOW TO THINK ABOUT UNANIMITY IN THE EU?

Vít Havelka

October 2023

Supported by:



Ministry of Foreign Affairs
of the Czech Republic

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the Ministry of Foreign Affairs of the Czech Republic.

This paper was supported by the Ministry of Foreign Affairs of the Czech Republic within a granting scheme Priorities of the Czech foreign policy and international relations.

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Introduction

Together with the opening of accession talks with Ukraine and Moldova, the debate within the European Union on the transition from certain areas requiring unanimity to qualified majority voting has started again. Although this is not a new debate, it is worth looking at the current situation, describing the problems caused by unanimity and coming up with concrete solutions.

This text should be seen primarily as one of the first contributions to the debate within the Czech Republic. Its public space is currently flooded with a great deal of inaccurate information and half-truths that prevent a substantive debate on this important topic. The following article is thus intended for the professional and general public concerned with the institutional processes of the European Union.

It is based on the thesis that unanimity generally slows down and possibly prevents collective decision-making within the EU. The loss of veto of essential issues to national interest is most often cited as the main reason for rejecting the move to qualified majority voting. The debate therefore often focuses only on "what a country has to lose". However, this is only one side of the coin. It is important to note that the failure to reach a decision does not lead to a situation where nothing happens. No decision is also a decision - only the EU chooses passivity instead of actively addressing the problem.

This can be very well depicted on the case of the discussions on the revision of the Multiannual Financial Framework 2021-27 and the related financial assistance to Ukraine. In December 2023, Hungary vetoed a MFF mid-term during the European Council meeting, thus preventing the remaining 26 member states from financially supporting the Ukraine through the European budget. In this case, there has been no decision, only inaction on the part of the EU. The credibility of the Union as a whole was at stake, and the problem must have been resolved as quickly as possible. The European Union's inaction during the latest Israeli-Palestinian

conflict was similar. The Member States were unable to agree on a unified approach and, consequently, the EU was unable to play a major role in resolving the war.

Unanimity in today's EU

Under the European Union's current decision-making process, Member States usually take decisions by qualified majority. Since the entry into force of the Lisbon Treaty, this represents 55 % of the Member States, which must also equal at least 65 % of the Union's population. It is important to mention here that the system was set up when the United Kingdom was still a member of the EU and therefore represents the balance of power at that time.

At the same time, unanimity is only used for voting in the Council of the EU in specific areas such as foreign affairs, tax and social policy or procedures to protect the rule of law in EU member states (so-called Article 7). The European Council always decides by consensus, and a quorum requires the presence of at least 2/3 of EU members. A specific case is the adoption of the so-called Multiannual Financial Framework, which sets the outlines of the EU's annual budgets for at least 5 years ahead. Unanimity is also required for its revision.

In the past, the abolition of unanimity without a concrete result has been considered mainly in the area of Common Foreign and Security Policy, as this method of voting has proved to be the most restrictive in this area. However, it should be noted that, compared to, for example, 10 years ago, there has been a significant change in the geopolitical situation in the world, and at the same time, we witness a shift in thinking about the degree of globalisation and the security of supply chains. Therefore, the debate on the overall capacity of the Union and, in particular, the extension of the qualified majority to other areas is extremely important.

Compared to 10 years ago, attempts by some Member States to exploit unanimity to the very edge of political viability and a change of their relationship with the European Union to a transactional level is also proving problematic. An example of this is current Hungary, which, due to disputes over the state of its rule of law and the subsequent freezing of some money from the European budget, is using unanimity voting to gradually unblock Union's financial transfers to the country. As a result, this violates the rule of good faith in negotiations, where Hungary is not concerned with the substance of the issue at hand, but rather with its own particular interests. Voting by unanimity is a very powerful instrument to protect the vital interests of the Member States. However, it was never intended as an instrument of blackmail.

It is also worth mentioning that the institution of voting by unanimity has been circumvented in the past. A good example is the European Union's efforts to resolve the financial crisis in 2010-2011¹, when the United Kingdom resisted changes to the rules until a bail-out framework was created outside the European Union. It is therefore possible that we will see similar practices in the future. This happened despite the fact that an agreement on a platform of 27 Member States has always greater political legitimacy and does not bring the additional costs of setting up processes outside the EU institutional framework.

¹ <https://www.theguardian.com/world/2011/dec/09/david-cameron-blocks-eu-treaty>

Individual policies

Foreign policy

The area of foreign policy has so far been the most frequently discussed in the context of unanimity. This was mainly because, in the absence of a qualified majority, the EU was not in a position to pursue a truly united foreign policy, and it was also the area that was most visible from outside the Union. However, it is also important to note that member states are still sovereign subjects of international law and so, except for trade policy, the approach of third countries was mainly focused on direct discussion with national governments rather than the EU itself. A common foreign policy was particularly relevant in cases of common foreign (military and civilian missions) or accession policy.

This degree of irrelevance, however, began to change with the geopolitical changes brought about by the economic rise of Asia and Russia's simultaneous full-scale invasion of Ukraine. Discussions on sanctions packages against Russia were complex, and at the same time it became clear that states were demanding many exemptions that made the whole sanctions system either opaque or downright dysfunctional. It is therefore crucial to the debate within the Czech Republic to what extent the need for unanimity is essential for this country, and whether there is any possibility at all of the European Union deciding against the will of the Czech government in absolutely essential national interests.

It may be worth mentioning that the advantage of the Common Foreign and Security Policy was that there was the possibility of so-called 'constructive abstention'. States that did not want to participate in a particular decision abstained, allowing the whole Union to reach consensus. This worked reasonably well on less important matters, but now, together with the change in the overall geopolitical situation, one or two dissenting views are significantly undermining the vital interests of the rest of the EU Member States.

If Member States decide to switch from unanimity to qualified majority voting, there are two ways to do this. First, there is a transitional clause (the so-called *passerelle*) within the current legal framework of the Lisbon Treaty. Secondly, states can decide to change the Treaties, but this requires a lengthy ratification process with the need for referendums in some Member States. The first solution seems simpler, as only unanimous agreement of national governments is needed to trigger a *passerelle*. But the problem is that it transfers the voting method from unanimity to a standard qualified majority, which cannot be further modified. In the case of treaty changes, it could be decided, for example, that only a majority of 25 of the 27 Member States is sufficient.

Tax policy

Tax harmonisation is one of the few areas of internal market policy where unanimity is still needed to adopt new legislation. As a consequence, indirect taxes such as VAT have been harmonised in the past, but not corporate taxes. Attempts to introduce their uniform calculation, as in the case of the CCCTB, have always failed precisely because of the need for consensus.

The main problem with the lack of proper tax harmonisation is the distortion of the level-playing field in the single market, where individual Member States can promote tax optimisation through their tax policies. At the same time, the system directly invites a 'run to the bottom', where Member States compete to offer the best conditions - i.e. the lowest taxes. In the past, the situation has got to the point where the European Commission has, for example, ordered Ireland to impose additional taxes on large US companies that paid virtually no tax in that country.²

For countries like the Czech Republic or Germany, this is a real problem. Thanks to the four freedoms of the single internal market, they are losing tax revenues,

² <https://www.theguardian.com/technology/2023/nov/09/apple-suffers-setback-in-fight-against-eu-order-to-pay-11bn-tax-bill-in-ireland>

which are going to only a few tax havens within the EU. A move to qualified majority voting could help address this situation. On the other hand, there is a risk that the Czech Republic itself would be forced to increase its overall tax burden, as it is significantly below the EU average in its tax mix. If a serious proposal for harmonisation is presented by the European Commission, it is necessary to analyse the impact specifically on the Czech Republic.

Last but not least, it can be mentioned that in the event of an agreement to abandon the need for unanimity in tax matters, the EU Member States can use the passerelle clause. Thus, a possible change does not require a direct amendment of the treaties, but only the unanimous consent of all national governments.

EU budget

The EU budget is enacted in two levels. First, the so-called multiannual financial framework is adopted, which sets the Union's total revenue and expenditure for seven years ahead. It also sets out the individual budget headings. The MFF is then used as the basis for the EU's annual budgets, which are essentially a MFF plans for one year. The MFF requires unanimity, while the EU's one-year budget requires only a qualified majority. This system has the advantage of avoiding annual haggling and the shape of the budget. Negotiations on the MFF are very complex and normally take place over several years. If the EU were to undergo such a process every year, it would practically paralyse its activities. On the other hand, it makes the EU budget very rigid and unable to respond flexibly to current problems and challenges. To this end, the so-called MFF revision is therefore being adopted, which, around the middle of the seven-year period, is intended to adjust the expenditure side to better reflect the current political situation. However, unanimity is again needed for the revision.

Again, this has not been a major problem in the past, as the European budget has been used primarily to implement cohesion policy and the single agricultural

policy. At the same time, the international political environment was more stable, so there was no need to respond to challenges such as the Russian war in Ukraine. Today, it is becoming clear that the rigidity of the European budget, combined with the need to achieve unanimity, is causing major problems in the Union's operational capacity.

It should be noted, however, that maintaining unanimity in this area still makes sense. The European budget, with its strong position on agricultural and cohesion policy, is a direct consequence of this. For the Czech Republic, this remains a vital source of revenue and it would not be worth risking its existence. In fact, in the event of a move to a qualified majority, there would be a significant shift of power towards net contributors to the European budget, and the current robustness of cohesion policy could probably not be counted on.

On the other hand, significant work can be done on the flexibility of the European budget under the Multiannual Financial Framework. Member States should clearly strengthen the available funds that could be used to deal with crisis situations. Together with the changing geopolitical environment, it will be essential for the European Union to be able to allocate money effectively where it is needed within the framework of annual budgets and not be too bound by the rules set out in the MFF.

Changing contracts vs other methods

Switching from unanimity to qualified majority or other voting methods should be discussed on a case-by-case basis. As shown in the examples described above, there are several options to improve the EU's capacity to act. It is not necessary to change the treaties directly or to use passerelle, but for some policies a change in the Member State's approach is sufficient.

Treaty changes generally have the great advantage that it is not necessary to go straight to qualified majority voting, but it is possible to set up the voting method

in a way that seems most advantageous at the moment. The major disadvantage, however, is the need for ratification by individual Member States, which makes any change very difficult. Secondly, it is worth mentioning that changing the voting method by amending the treaties does not have to be done directly by a separate act, as was the case with the Lisbon Treaty, but can also be implemented in accession treaties. These are also part of the EU's primary law and in some countries are not subject to such strict ratification rules (referendum) as in the case of traditional primary law changes.

The last, and to some extent nuclear option, is to build cooperation outside the legal framework of the European Union. This has happened in the past in the resolution of the so-called eurozone crisis. However, this approach poses a rather large risk for the future development of the EU. It reinforces differentiated integration and creates a certain set of 'core integrations', while demotivating states standing outside to be part of the EU. Here again, reference can be made to the United Kingdom, where Conservative Party leaders have begun to think seriously about Brexit as a response to resolving the eurozone crisis.

Conclusion

Whatever the conclusion of the debates on the future of the European Union and the voting system, it is essential to frame the debate comprehensively and case by case. It is not possible to mix foreign policy, tax harmonisation and budgetary issues together. In case of the Czech Republic, it is necessary to carry out concrete impact studies and not to reject changes a priori. It is highly likely that in many cases, individual arguments of people opposing qualified majority are based more on emotion than on factual analysis.

At the same time, it is highly likely that changes to the voting system will happen when the EU enlarges. Furthermore, it is in the interest of the Czech Republic that the Union is operational and that decisions can be taken without one or two members holding the rest of the EU in check. The policy of enlargement and interference with the accession of new Member States is one of the constants of Czech foreign policy and this declared national interest should be reflected in the position towards the transition from unanimity to qualified majority.