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## **Decision-making procedures of the Council of the European Union**

### **1. INTRODUCTION**

As an introduction, the Council is an "intergovernmental" institution, as it is composed of one representative of each Member State, at ministerial level. The Council is therefore said to be the institution that represents the interests of the governments of the Member States.

This institution was called the "Council of Ministers" in the original founding treaties. Since the Treaty of Maastricht, it has been known as the "Council of the European Union" and in the Treaty of Lisbon it is referred to simply as the "Council". It should in any case be borne in mind that the Council acts within the framework of the powers conferred on it by the founding Treaties. The Council is therefore subject to review by the Court of Justice of the European Union.

The Council has some peculiarities in its composition. Firstly, it is a "collegial" institution.



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Moreover, it is possible for it to be made up of any minister from the member states, as well as representation. In this respect, it should be noted that the aim is to encourage the maximum presence of its members, and, to this end, it is stated that, in the event of a vote, each member of the Council may act on behalf of only one of the other members. Secondly, it should be borne in mind that the Council is a "single" institution, with some important nuances. Thus, there is only one Council, although there may be different "formations" of the Council.

## **2. GENERAL DECISION-MAKING PROCEDURE**

As regards the general procedure for decision-making by the Council, the first thing to be clear about is that the general rule is that the Council shall act by qualified majority, except where the founding Treaties provide otherwise.

A qualified majority is defined as a minimum of 55% of the members of the Council representing Member States with at least 65% of the Union's population. In other words, it is a double majority of states and population which, in practice, means that at least fifteen of the twenty-seven Member States are represented.

However, where the Council does not act on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and

Security Policy, the so-called "enhanced qualified majority" rule will apply. In such cases, a qualified majority 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, the Lisbon Treaty has again extended the scope of qualified majority decision-making. In this respect, QMV is introduced or extended for 68 legal bases, most often accompanied by the ordinary legislative procedure (including many areas of the former third pillar). Qualified majority voting also applies to the appointment of the President and members of the Commission, as well as to the members of the Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions.

### **3. FIRST EXCEPTION PROVIDED FOR IN THE TREATIES**

The first exception to qualified majority decision-making in the Council provided for in the founding treaties is the simple majority rule.

According to Article 238 of the Treaty on the Functioning of the European Union, "when required to act by a simple majority, the Council shall act by a majority of its component members". Since each member of the Council has one vote, a simple

majority is reached when at least fourteen members of the Council vote in favour.

The simple majority rule only applies where it is expressly provided for in the Treaties establishing the Union. It is therefore a decision-making process by default: it is only used when the general rule does not apply. In reality, however, it only applies to a few matters, such as: the Council's Rules of Procedure, the organisation of the General Secretariat of the Council and the statutes of the committees provided for in the founding Treaties.

#### **4. SECOND EXCEPTION PROVIDED FOR IN THE TREATIES**

The second exception to qualified majority decision-making in the Council provided for in the founding treaties is the unanimity rule.

The unanimity rule applies in a limited number of areas, such as: 1) Common Foreign and Security Policy, including the Common Security and Defence Policy; 2) Judicial and police cooperation; 3) Fiscal policy; 4) Social policy; and 5) Reform of the founding treaties.

It should, in any case, be made clear that abstentions by members present or represented shall not prevent the adoption of those resolutions of the Council which require unanimity of its members.

However, it should be noted that the founding Treaties provide for the existence of a "footbridge". This "footbridge" consists in the fact that, where the Treaty on the Functioning of the European Union or Title V of the Treaty on European Union provides for the Council to act unanimously in a given area or in a given case, the European Council may adopt a decision authorising the Council to act by qualified majority in that area or in that case.

There are two conditions for this "footbridge" to apply. The first is that this "footbridge" will never apply to decisions with military or defence implications. The second is that for the adoption of the decisions covered by this "footbridge", the European Council must act unanimously after obtaining the consent of the European Parliament, which will act by a majority of its members.

The application of the unanimity rule has caused tensions in practice. On the one hand, it should be noted that, in general, the Council tends to seek unanimity, even in matters where it is not required under the Treaties. Thus, on 30 January 1966, the "Luxembourg Compromise" was adopted, which stated that "where, in the case of decisions which can be taken by majority vote on a proposal from the Commission, the fundamental interests of one or more partners are at stake, the members of the Council shall endeavour, within a reasonable time, to find solutions which can be adopted by all

the members of the Council with due regard for their mutual interests and those of the Community".

More recently, on 29 March 1994, the "Ioannina Compromise" was adopted, which aimed to protect Member States that were close to constituting a blocking minority, by providing that, if such States expressed their intention to oppose a decision by the Council acting by qualified majority, the Council would do its utmost, within a reasonable period of time, to reach a solution satisfactory to the vast majority of Member States.

But on the other hand, the European Commission, in order to avoid the vetoes that the unanimity rule implies in practice, generally prefers the use of the "footbridge" for the Council to decide by qualified majority. Thus, it should be recalled that, in his 2018 State of the Union address, President Juncker announced a comprehensive evaluation of the footbridge clause. As a result, the Commission has so far presented four Communications on: Common Foreign and Security Policy, Fiscal Policy, Energy and Climate Policy, and Social Policy, proposing the use of qualified majority rule in these areas.

Also more recently, in her speech at the closing event of the Future of Europe Conference on 9 May 2022, Commission President Ursula von der Leyen reaffirmed the Commission's willingness to implement the citizens' proposals adopted to overcome the blockage of the unanimity vote.

According to the Commission, "it is now up to us to choose the most direct way to achieve this, either by using all the limits of what we can do under the Treaties or, yes, by amending the Treaties if necessary".

