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Research Report

The state of consensus in the EU: What is the way forward in the debate about expanding qualified majority decisions?

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SWP Comment

NO. 16 APRIL 2024

The State of Consensus in the EU

What Is the Way Forward in the Debate about Expanding Qualified Majority Decisions?

Nicolai von Ondarza and Isabella Stürzer

The debate in the European Union (EU) on the expansion of majority decision-making is entering a new round. Germany, in particular, is seeking to build a coalition in favour of more majority decisions in light of the, at times, difficult decision-making process concerning foreign and security policy, and the prospect of future EU enlargement. Too often, however, this debate is not taking into account how and with what results majority decisions are being used in other, sometimes equally contested policy areas. An analysis of the public votes since 2010 compiled in the SWP's new EU Council Monitor shows that EU member states generally strive for consensus, even in majority decisions. Larger groups of member states are almost never outvoted. Still, Hungary and Poland increasingly stand out as two states that are outvoted more often than others, albeit to a slightly lesser degree than the United Kingdom (UK) was before Brexit. One way out of the dilemma between strengthening the EU's ability to act and protecting vital national interests could be a well-balanced "sovereignty safety net".

The discussion about expanding majority decisions in the EU is not new. With every treaty amendment to date, the EU's decision-making processes have been changed, moving more and more policy areas from unanimity in the Council to qualified majority voting (QMV). This has also affected policy areas that are core to national sovereignty, such as justice and home affairs or police cooperation. Since the Treaty of Lisbon, however, most EU member states have not been willing to make any further changes to the treaty. Nevertheless, there have been several initiatives to utilise the Passerelle or "bridging" clauses. This would make it possible to switch to other decision-making procedures without amending the

treaty: from unanimity to QMV or from special procedures to the ordinary legislative procedure, whereby the Parliament would be allowed to co-decide in certain cases (see SWP Comment 61/2022). So far, however, these initiatives have come to nothing.

New dynamics in an old debate

In 2023/24, the debate on the expansion of majority decisions has gained new momentum, both for the short to medium term and for the long term. In the short to medium term, it is focussed on foreign and security policy. To this end, a "Group of Friends on Qualified Majority Voting in EU Common



Foreign and Security Policy” was formed in 2023. It currently comprises 11 EU states, including co-initiator Germany. The focus on foreign and security policy is not only due to the geostrategic challenges posed by the Russian war of aggression against Ukraine. The (heavily criticised) use of “tactical vetoes” in the Common Foreign and Security Policy (CFSP) – with the aim of forcing concessions in policy areas that are not originally related to the basis for decision-making – also plays a role.

The Group of Friends is deliberately aiming for a policy of small steps – for example, the move to QMV should only happen in selected areas of CFSP and by using the Passerelle clause. Examples that have been discussed are decisions on civilian operations of the Common Security and Defence Policy (CSDP), sanction decisions and EU statements on human rights issues. The members of the Group of Friends are expressly not seeking treaty changes, nor do they wish to make any advance decisions with regard to QMV in other areas. They have also committed themselves to making greater use of the option of “constructive abstention” in the CFSP in the future. Nevertheless, even if the Passerelle clause is used, in the end all EU member states must come to agreement in the European Council and ratify the switch at the national level – in many states, including Germany, via parliamentary procedures. The Group of Friends’ very targeted approach would therefore also have to convince all 27 EU states to agree on the change.

The long-term perspective is focussed on EU reform and linked to the next enlargement. Following the Russian attack on Ukraine, the EU opened up the prospect of accession to Ukraine, the Republic of Moldova and Georgia, and it decided in December 2023 to start accession negotiations with Ukraine and Moldova. In addition, accession processes with the countries of the Western Balkans (with bilateral blockades still in place) were revitalised. The prospect of an EU with 30 or more diverse members has thus returned – and with it the debate on the necessary reform of the EU.

In view of this development, German Chancellor Olaf Scholz, in his Prague Speech in August 2022, called for a “gradual transition” to more majority decisions, for example in foreign and tax policy. In September 2023, a Franco-German group of experts presented proposals for the enlargement and reform of the EU, including a transition to QMV for all EU policy decisions. In December, the EU-27 agreed (in the “constructive absence” of Hungarian Prime Minister Viktor Orbán) not only to begin accession negotiations with Ukraine and Moldova, but also that the EU would have to be reformed in the coming legislative period in order to strengthen its ability to act. However, the European Council did not explicitly agree on what these reforms should look like and whether they should include more majority decisions. In addition, in a separate initiative with Slovenia, Germany presented the idea of introducing QMV for technical decisions during the enlargement process – but not for major political decisions such as admitting countries to the EU. The aim is to speed up enlargement processes in general.

It is still unclear whether, and in what form, an expansion of majority decision-making will be included in a package to reform the EU. At this point, it is only certain that the reform and enlargement processes are to be negotiated in parallel, and that both are lengthy processes with a post-2030 perspective. For both enlargement and reform – be it via treaty amendments, accession treaties or flexible instruments such as the Passerelle clause – the following rule still stands: no constitutional decisions without unanimity, including the transition to majority decisions.

Between the EU’s ability to act and national sovereignty

It looks very unlikely that such an agreement will be reached swiftly. Three groups of EU states can be distinguished here. At the heart of the debate is the issue of maintaining the balance between the EU’s ability

to act and national sovereignty, while fears about the dominance of large member states also plays a role.

The first group, those in favour of expanding QMV, includes among others Germany, Belgium and Spain, as well as the Netherlands, Denmark, Finland and Slovenia with regard to the CFSP. They emphasise that more majority decisions would strengthen the EU's ability to act. However, the aim is not to regularly outvote groups of member states — which in practice, as shown below, has rarely been the case to date — but to change the negotiating situation in such a way that it is geared towards seeking compromise from the outset. This should also prevent external players such as Russia and China from exerting influence via individual veto players in the EU.

The second group, comprised particularly of small and medium-sized EU states, is not opposed to further QMV in principle, but it has two very specific concerns: On the one hand, each EU state has key national interests in sensitive areas, especially in foreign and security policy, in which it does not want to see EU decisions made against its will under any circumstances. This includes, for example, the Russia policy for the Baltic states or the Turkey policy for Greece and Cyprus. On the other hand, small and medium-sized states in particular fear that large states, namely Germany and France, would dominate decision-making. As the qualified majority is calculated according to population size, Germany (18.7 per cent of the EU-27) and France (15.1 per cent) only need a few partners to reach the blockade minority of at least 35 per cent of the represented EU population from at least four states. Smaller EU members such as Estonia (0.3 per cent), Ireland (1.15 per cent) or the Czech Republic (2.4 per cent) require either large states as partners or many smaller ones. By contrast, in the case of unanimity, each individual national government has (legally speaking) the same voting weight.

Finally there is Hungary, which is one of the EU member states that holds a fundamentally critical view of majority decisions

and is also calling for a return to more intergovernmentalism and unanimity in policy areas other than foreign and security policy. This applies in particular to EU migration and asylum policy, as Hungary sees the majority decisions of 2015/16 on EU refugee relocation as a violation of its national sovereignty. The Hungarian government strictly rejects the current reform of the Common European Asylum System (CEAS), for which the Council's position could only be adopted by majority vote. Together with Poland's then Prime Minister Morawiecki, Hungary's Prime Minister Orbán repeatedly tried to bring the CEAS reform to the level of the European Council, and thus to unanimity. However, the other member states rejected this. As a result, Hungary and Poland blocked the Council's final conclusions on migration policy for several months; some conclusions were then stated in the name of the President of the European Council, Charles Michel, without the consent of either country. Although the new Polish government has distanced itself from this core position, it is still opposed to expanding majority decisions.

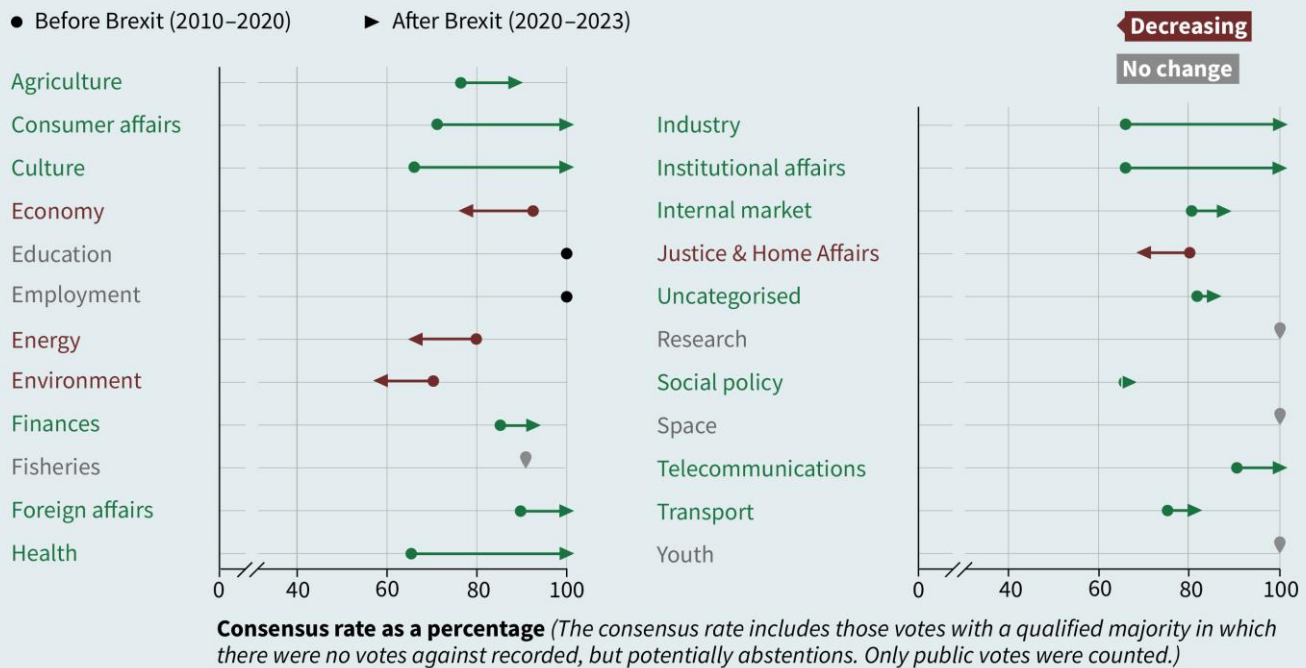
High consensus also with QMV

In order to overcome these entrenched positions and move the debate forward, it is worth taking a look at the practice: How and with what results are decisions taken with a qualified majority? To this end, the SWP has collected the voting behaviour of national governments in more than 1,300 public votes in the Council in the EU Council Monitor — from the Treaty of Lisbon entering into force up until September 2023.

These votes show an astonishingly high consensus rate among the member states — on average, they achieved a consensus in almost 83 per cent of votes, although majority decisions would have been possible. The consensus rate includes those votes with a qualified majority in which there were no votes against, but potentially abstentions. The consensus rate has been surprisingly stable over time. Until Brexit,

Figure 1

Consensus rate in the Council of the European Union (2010–2023)



Source: SWP EU Council Monitor. All data originally published by the Council of the EU. Before Brexit covers all public votes from January 2010 through January 2020. After Brexit covers all public votes from February 2020 through July 2023.

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it was 82 per cent, and since Brexit it has been as high as 85 per cent. If we only look at the votes in which all states voted in favour, that is, in which there were also no abstentions, the figure for the entire observation period is still 64 per cent.

A change in the consensus rate can be spotted when individual policy areas are examined: In the area of finance, for example, consensus was reached in 85 per cent of votes before Brexit and 93 per cent since Brexit. The consensus rate has also risen in the area of institutional affairs, from 67 to 100 per cent. By contrast, it has fallen from 80 to 70 per cent in the area of justice and home affairs, which includes the CEAS reform (see Figure 1).

On the one hand, the high consensus rate means that at the end of EU negotiations – despite disputes – all member states can usually agree on the negotiated compromise. In addition, national governments are reluctant to outvote larger groups of states, even if numerically a qualified majority has already been reached. Votes in which four

or more member states are outvoted therefore remain a rarity. On the other hand, the high consensus rate also shows that majority decisions alone are not a magic solution to all of the EU's difficulties in terms of its ability to act: Even with QMV, negotiations in the Council can take a long time or even be permanently blocked if the EU states are divided into several large groups.

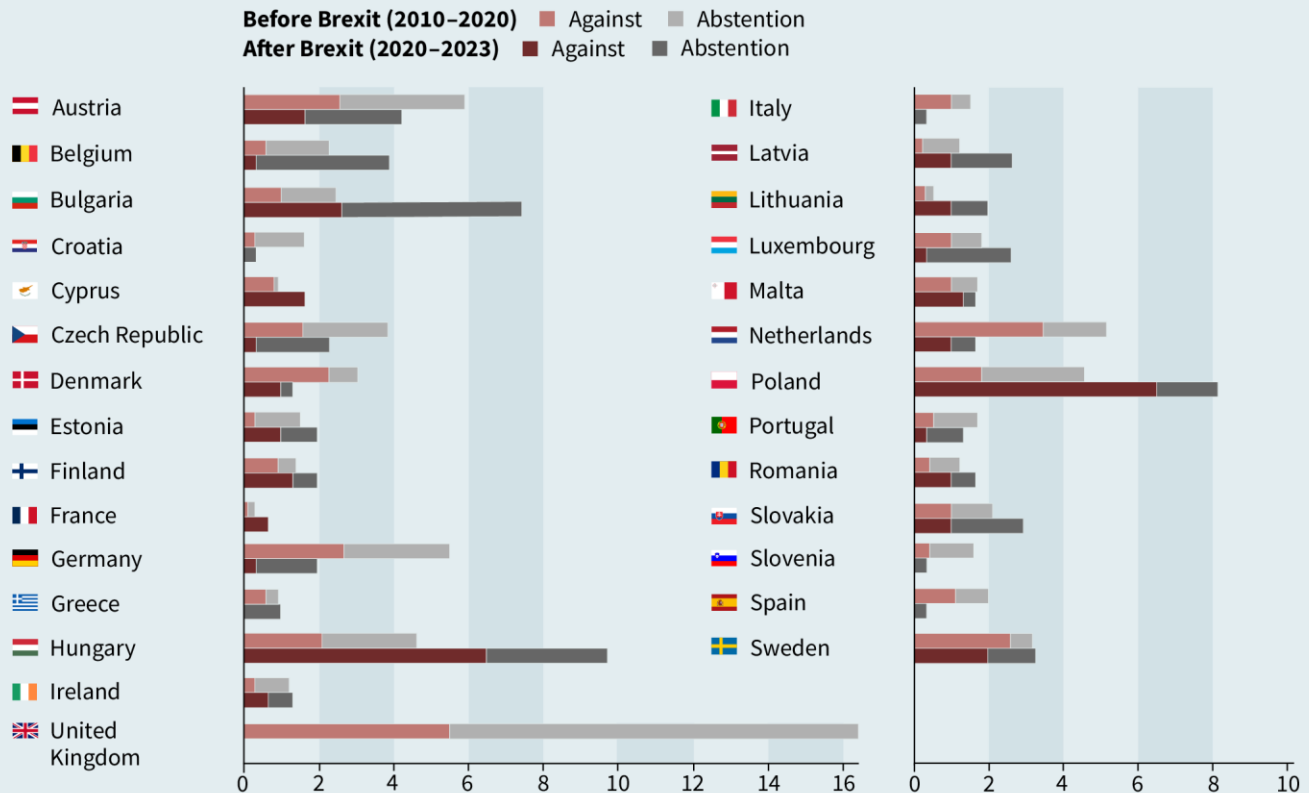
No structural minorities

A look at which states are outvoted more frequently is also instructive for the debate on the expansion of majority voting. As the explanations for the consensus rate already indicate, one country has long been an outlier – the UK. It clearly tops the list of the most frequently outvoted countries, both in the period up to its official withdrawal from the EU and in the overall analysis: The UK was outvoted a total of 167 times. This means that the former EU member was outvoted in 16 per cent of the public votes while it was still a member (see Figure 2). In

Figure 2

Out-votes per EU member state before and after Brexit

Share of total public votes in per cent



Source: SWP EU Council Monitor. All data originally published by the Council of the EU. Before Brexit covers all public votes from January 2010 through January 2020. After Brexit covers all public votes from February 2020 through July 2023.

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contrast to this stands France, which was only outvoted five times in the entire observation period. This corresponds to significantly less than 1 per cent of votes.

A comparison of voting behaviour before and after Brexit shows that two member states whose governments have repeatedly spoken out against majority decisions now stand out — Hungary and Poland (as well as Bulgaria) are now the most frequently outvoted states. The situation was different before Brexit: Between 2010 and 2020, Austria, Germany and the Netherlands were the second to fourth most frequently out-voted countries after the UK. Nevertheless, it is important to note that, until Brexit, the UK was outvoted almost three times as often as Austria, and almost seven times as often as the tenth-placed Bulgaria. Since Brexit, Hungary, which is now in first place,

has been outvoted 2.3 times as often as Austria in fourth place, and just over four times as often as the Czech Republic in tenth place. This means that Hungary is still considerably less often in the minority than the UK was before it left the EU.

Two other things stand out in the voting behaviour of Poland and Hungary after Brexit. Firstly, both are more likely to vote against instead of abstaining, signalling their outright rejection of an EU decision. Secondly, they vote against decisions significantly more often together; at least until the change of government in Warsaw in December 2023, Warsaw and Budapest were in clear solidarity.

There were no instances found in the data in which all four states of the Visegrád Group (Poland, Hungary, Czech Republic, Slovakia) were outvoted. This suggests that

negotiations continue if all four reject a proposal together, but Poland and Hungary stick to their position due to having less of a willingness to reach a consensus and are outvoted in the end if they are the only opposing states. If we look at all votes with at least one vote against in the entire period covered in the EU Council Monitor, there was only one case up to Brexit in which Poland and Hungary were jointly outvoted: a vote on social policy. Since Brexit, the two countries have been outvoted together once each in the policy areas of economy, energy and environment, and three times in justice and home affairs. By way of comparison, in March 2024, Germany and France were outvoted together for the first time ever in a public vote, in this case on the Platform Work Directive.

A comparison with the members of the Group of Friends on QMV is also interesting: It includes countries such as France and Italy, which were rarely or never outvoted in the public votes, as well as Belgium, Germany, the Netherlands and Sweden (as an observer to the Group of Friends), which were outvoted relatively frequently. Counting the entire period since 2010, Germany has been outvoted almost as frequently as Poland or Hungary.

Even if Poland and Hungary have recently been outvoted more often than other EU members, a structural minority cannot be recognised. In other words, it is not the case that a country or a group of countries is outvoted with great regularity in a number of different policy areas. At the same time, the change in their voting behaviour after Brexit is striking: Poland never voted in favour when Hungary voted against, and vice versa.

Controversial policy areas

It is not only the number of out-votes that distinguishes Hungary and Poland from the UK, but also the policy areas in which they were outvoted. The UK was most frequently outvoted in the areas of finance (26 per cent) and foreign affairs (18 per cent), but above all institutional issues (46 per cent),

which concern the nature and functioning of the EU as a whole. For Poland and Hungary, other policy areas take centre stage: The three areas in which they have been outvoted most frequently since Brexit are environment; justice and home affairs; and transport and social policy, respectively. The controversial CEAS reform, which Orbán cites as an argument for his demand to return to unanimity, falls under the area of justice and home affairs.

Overall, the increased rate of Poland and Hungary being outvoted in the area of justice and home affairs after Brexit stands out. Among other things, this includes migration policy, which both countries strongly criticise and politicise. If we look at this policy area as a whole, the consensus rate has only fallen slightly compared to the time before Brexit (from 80 per cent to 70 per cent, see Figure 1). In transport and social policy, it has even risen slightly (to 81 per cent and 67 per cent, respectively), while in environmental policy it has fallen (from 70 per cent to 58 per cent). This makes it clear that Hungary and Poland do not represent a structural minority. Only in the policy area of justice and home affairs have they shown less of a willingness to vote with the majority; this is partly due to their location on the EU's external border, but also due to the strong politicisation of asylum issues. Nevertheless, it is worth noting that unlike the UK, Poland and Hungary are not (yet) expressing any disapproval of the EU's institutional processes — and therefore ultimately of the EU as such — with their abstentions and votes against, but are instead pointing to dissent in a clearly defined political field.

QMV expansion with a safety net

Two conclusions can be drawn from the analysis of voting behaviour: On the one hand, decisions by a qualified majority in the policy areas in which they are already being applied today serve primarily as an instrument to push for consensus and compromises. The Council of the EU still func-

tions very much as an intergovernmental body in which the national governments strive for unanimity, or at least consensus in the majority of cases. Overruling individual governments or even larger groups remains a rare occurrence. The consensus capacity of the EU-27 remains high, despite the differences between the member states.

This strengthens the arguments of the Group of Friends on QMV, as the expansion of majority decisions should not lead to governments being regularly outvoted, especially in such sensitive areas as foreign and security policy or tax policy. It is also important for the democratic legitimacy of the EU that a consensus is generally sought and found among all states.

On the other hand, a look at the voting records shows that there are certainly states which are clearly outvoted more often than others. In light of the prospect of an (even) more heterogeneous EU with 30 or more member states, an expansion of majority decisions should be accompanied by mechanisms that not only protect legitimate national interests in critical areas, but at the same time enable more capacity to act than currently allowed for by adhering to the unanimity principle.

A small or more ambitious approach

If the German Federal Government wants to realise its goal of significantly expanding majority decisions, there are at least two strategic questions. The first concerns the trade-off between a “small” and a “more ambitious” approach: The small, short-term approach corresponds to the Group of Friends’ endeavour to introduce QMV in selected individual areas of the CFSP, such as decisions on civil CSDP operations, opinions on human rights issues or sanctions. The advantage of this would be that majority decisions in foreign and security policy could be tested, and the Passerelle clause could be applied for the first time. However, this would also require unanimity, and a great deal of political capital would have to be expended in order to achieve

this. In view of the limited expansion, it would ultimately not make the EU substantially more capable of acting.

With the more ambitious, long-term approach, the issue of expanding majority voting would be linked to the enlargement of the EU. As part of a more extensive reform programme, the application area of majority decisions would be expanded alongside broader institutional reforms to prepare for the next enlargement. In this way, a more comprehensive approach could be taken to reform EU decision-making processes; entire policy areas would switch to majority decisions. This could give the EU a real boost in terms of its ability to act. Linking this to a broader reform agenda for institutions, the budget and individual policy areas would also make it possible to embed the expansion of QMV in a broader reform package to find a balance between all member states. However, this process will be a long one — lasting at least the entire next EU legislative period — and the outcome is uncertain.

Politics can and should pursue both strategies in parallel. Still, it remains true that any move towards more majority decisions requires unanimity, and therefore a complex balancing process with all member states. This balance is likely to be easier to achieve through a major reform — also and especially with the aim of comprehensive expansion — than in an isolated one in which only a few “equalisation payments” are possible. Furthermore, more extensive changes to the QMV resolution could be examined in the event of a major reform, for example adjusting the voting rights of small and large states in an enlarged Union.

The second strategic question is about how a balance can be struck between legitimate national interests — particularly in policy areas that are important for national sovereignty — and the EU’s ability to act. In addition, the balance between large and small member states plays a role. The key here could be a sovereignty safety net, such as that proposed by the Franco-German expert group on the reform and enlargement of the EU. Such a safety net would

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allow member states to transfer decision-making processes to the European Council despite QMV if vital national interests are affected. Then a consensus could be reached there at the highest political level.

The Treaty on European Union already includes similar “emergency brakes” or safety nets, for example in the CFSP (Art. 31 para. 2 TEU). Two factors would be decisive for the concrete *triggering* of the safety net and the *final decision-making capacity*. Triggering centres on the question of whether a national government could activate such a protection instrument alone, in a group with others or with a control mechanism. A combination of the two would be recommendable: Triggering by an individual member state through a kind of peer review by a qualified majority of the Council that accepts vital national interests are affected. This is provided for in Article 31(2) TEU, for example. Such an approach would make it possible for each state to put forward its core interests and simultaneously protect against the misuse of the instrument as a quasi-veto.

The *final decision-making capacity* is about what happens when the safety net is triggered – does the European Council then make the final decision, or is there a deadline and another way back to majority decisions? A safety net, for example in the CFSP, can only protect vital national interests if the European Council becomes the final decision-making authority. If the other member states have recognised such a vital national interest in the Council, then a common political solution that is acceptable to all should also be found at the highest political level in the European Council.

A sovereignty safety net that offers both sufficient protection of vital national interests and creates scope for the EU's ability to act could be a way out of the long-standing deadlock in the debate on majority decisions. It could thus pave the way for a more capable EU – especially in the expectation of an EU 30+.

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All data on public votes in the Council since 2010 can be found in the SWP's new
EU Council Monitor: <https://www.swp-berlin.org/en/publication/eu-council-monitor>*