

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

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

12425/18

Submitted by the Foreign and Commonwealth Office on 5 October 2018

SUBJECT MATTER

1. In his State of the Union Address in September 2018, President Juncker called for greater use of qualified majority voting (“QMV”) in the certain areas of the Common Foreign and Security Policy (“CFSP”):

“Last but not least, by Sibiu I want to make visible progress in strengthening our foreign policy. We must improve our ability to speak with one voice when it comes to our foreign policy.

It is not right that our Union silenced itself at the United Nations Human Rights Council when it came to condemning human rights abuses by China. And this because not all Member States could agree.

It is not right that one Member State was able to hold the renewal of our arms embargo on Belarus to ransom, or that sanctions on Venezuela were delayed for months when unanimity could not be reached.

This is why today the Commission is proposing to move to qualified majority voting in specific areas of our external relations. I repeat what I said last year on this matter. We should move to qualified majority voting not in all but in specific areas: human rights issues and civilian missions included. This is possible on the basis of the current Treaties and I believe the time has come to make use of this “lost treasure” of the Lisbon Treaty.”

2. This Communication sets out the Commission’s arguments in greater detail, arguing that QMV would allow the EU to play a more effective global role. It also argues that use of QMV can help to build European unity because it acts as a “catalyst to engage all actors in finding compromises”.
3. The Commission propose that the Council makes use of existing potential for use of QMV in areas set out in Article 31 (2) TEU. This would allow decisions to be taken by QMV when (i) adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union’s strategic interests and objectives; (ii) adopting decisions on proposals from the High Representative for Foreign Affairs and Security Policy that have been presented following a specific request from the European Council, (iii) adopting any decision implementing a decision defining a Union position or action or (iv) appointing a special representative. Although this is already possible under the Treaties, practice to date has been to take these decisions by consensus.

4. The document also refers to the potential for expanding the use of QMV in CFSP through the ratchet or passerelle clause, in Article 31(3) TEU. Article 31(3) TEU provides that the European Council may unanimously adopt a decision which stipulates that the Council shall act by QMV in cases other than those specified in Article 31(2) TEU. The Commission suggest moving to QMV in three areas:

- EU positions on human rights in international fora, for example the UN Human Rights Council;
- sanctions policy;
- Civilian CSDP missions.

5. The Commission refer to two existing safeguards: an 'emergency brake' and Article 31(4) TEU which says that decisions having military or defence implications will not be taken by QMV.

SCRUTINY HISTORY

6. There is no scrutiny history for this item

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Foreign Affairs has responsibility for CFSP.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. Foreign policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

9. This is not a proposal for legislation. The Commission is inviting the Leaders of the Member States to endorse the proposals in the Communication in May 2019.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

10. No.

SUBSIDIARITY

11. The document refers to the EU's decision-making powers on foreign policy. It is therefore appropriate that it is considered at EU level.

POLICY IMPLICATIONS (including exit implications where appropriate)

12. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

13. The Commission has invited EU leaders to endorse the proposals at the Informal European Council in May 2019. This will be after the UK has left the EU, but the UK has agreed to an Implementation Period, during which EU law applies to the UK, unless otherwise provided in the Withdrawal Agreement.

We will need to consider how a change from unanimity to QMV – both through a change in existing practice in line with the treaties, and through the use of the ratchet or passerelle clause - could affect the UK's interests during the Implementation Period.

14. The UK is seeking a deep and special partnership with the EU following our withdrawal. It is therefore in our interests that the EU continues to be an effective foreign policy actor in the way it chooses. We recognise some of the frustrations highlighted by the Commission. However, we think that EU foreign policy decisions made by consensus carry considerable weight because all Member States agree them.

15. We will follow the debate closely, and will update the Committees following further discussions with the Commission and other Member States.

CONSULTATION

16. None.

IMPACT ASSESSMENT

17. None.

FINANCIAL IMPLICATIONS

18. None.

TIMETABLE

19. The document asks Leaders to endorse the proposals in May 2019.

A handwritten signature in black ink that reads "Alan Duncan". The signature is written in a cursive, slightly stylized font.

The Rt Hon Sir Alan Duncan MP
Minister for Europe and the Americas
Foreign and Commonwealth Office