

High Time for Real Common EU Foreign and Security Policy



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ERYK
ZIĘDAŁSKI

The last several years have brought unprecedented challenges for the European Union (EU) as a whole. It faced a full-scale Russian invasion of Ukraine¹, the energy crisis that followed², as well as internal squabbles within the block (especially seen during the negotiations about sanctions against Russia³ and military aid for Ukraine⁴), not to mention trade competition with China⁵ and the

¹ <https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/>

² <https://www.consilium.europa.eu/en/infographics/eu-measures-to-cut-down-energy-bills/>

³ <https://www.reuters.com/world/europe/hungary-will-veto-eu-sanctions-russian-nuclear-energy-pm-or-ban-2023-01-27/>

⁴ Lukiv, J. and J. Parker (2023) *Hungary Blocks €50bn of EU Funding for Ukraine*. Available [online]: <https://www.bbc.com/news/world-europe-67724357>

⁵ <https://www.economist.com/china/2023/12/07/china-and-the-eu-risk-a-trade-war>

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IT WOULD BE DIFFICULT TO IMAGINE POTENTIALLY 36 MEMBER STATES AGREEING UNANIMOUSLY TO ONE SOLUTION, GIVEN HOW HARD IT IS ALREADY

United States⁶. All these phenomena have left their mark on the EU and have showcased the downsides of the currently existing arrangements in regard to the common foreign and security policy of the EU.

It became clear that there is a need for change. Therefore, it is not surprising that the European Parliament realized the extent of the existing problems and called to set up a convention centered around amending the treaties⁷. While doing so, the MEPs had in their minds the potential future shape of the European Union – as consisting of 36 member states (including Western Balkan countries as well as Ukraine and Moldova), rather than the current 27⁸.

The proposed amendments concern various areas – some very crucial for the European economy, while others deal with the balance of power between European institutions. However, the most important ones touch upon the common foreign and security policy, as they would mean the removal of the existing veto power for all member states. This change would essentially mean that EU's actions could no longer be blocked by the 'black sheep' like Hungary, a move that would greatly improve the velocity of the decision making, so crucial in the fast-changing world of today.

There are, however, a few drawbacks to that development. A major one would be the potential growth of populist forces, which would portray such a change as

⁶ <https://www.reuters.com/business/eu-seeking-resolve-trade-irritants-with-us-summit-2023-10-19/>

⁷ <https://www.europarl.europa.eu/news/en/press-room/20231117IPR12217/future-of-the-eu-parliament-s-proposals-to-amend-the-treaties>

⁸ See: Motives D and 2 of the European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

a 'limitation of sovereignty' by the European bureaucrats or even the 'dismantling of the nation state' (as the leader of formerly ruling Law and Justice party claimed in Poland⁹). Another one is the difficulty with passing such amendments, since there is a visible amount of opposition present among the politicians, especially of the central and eastern EU member states, to such an idea¹⁰.

Still, it seems that, in the long run, there is no other way forward for the EU if it wants to remain a competitive powerhouse. It needs to deepen its integration in crucial areas for the sake of security – like the energy sector and defense. At the same time, it must improve its decision making if it intends to fully accommodate the potential new member states. This is why the proposed changes go in a good direction.

The aim of this article is, therefore, to answer whether there is a need for changes to the EU's common foreign and security policy in order to accommodate the potential new member states, and if there is such a need, what an answer to that problem could be. Therefore, the starting point would be a presentation of current arrangements in that area combined with analysis whether they are sufficient with respect to integrating potential new members of the EU. Afterwards, proposed changes to the treaties will be explored, especially with the focus on removal of the veto power of the member states, which is (in my opinion at least) a necessary step. Apart from that, the article will touch upon the topics

of deepening the integration in the areas of military and energy, as well as addressing the problem of insufficient (in my opinion) monitoring of foreign direct investments from hostile countries (e.g. PRC), which all will be crucial for the EU to properly face potential challenges in the long run.

CURRENT ARRANGEMENTS: LIBERUM VETO

Before diving into the overview of the amendments proposed by the European Parliament, it is essential to take a look at the currently existing arrangements concerning the common foreign and security policy in order to better understand the full scope of the potential reform. In spite of previous tendencies to integrate member states in a greater number of areas, as well as the Treaty of Lisbon aiming to strengthen the EU's international position, common foreign and security policy has managed to retain its unique character, which is reflected in the provisions related to it.

Currently, the common foreign and security policy is regulated within both the Treaty on the European Union¹¹ (title V) and the Treaty on the Functioning of the European Union¹² (e.g., article 215). Article 21 of the TEU establishing EU's aims¹³ and Article 31 of the same treaty are probably the most important one of them all. The lat-

¹¹ European Union (2012) "Consolidated Version of the Treaty on European Union OJ C 326/13", [in]: *Official Journal of the European Union*. Available [online]: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

¹² European Union (2012) "Consolidated Version of the Treaty on European Union OJ C 326/47", [in]: *Official Journal of the European Union*. Available [online]: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

¹³ These aims include, among others: preserving peace; safeguarding its interests, security and independence; supporting democracy, the rule of law and human rights; as well as preserving peace and fostering sustainable development.

⁹ <https://www.polskieradio.pl/395/7784/Artykul/33155-76,kaczynski%E2%80%99s-wild-claim-polish-government-plans-to-practically-liquidate-the-nation>

¹⁰ OSW Team (2023) *The EU Debate on Qualified Majority Voting in the Common Foreign and Security Policy. Reform and Enlargement*. Available [online]: <https://www.osw.waw.pl/en/publikacje/osw-commentary/2023-10-12/eu-debate-qualified-majority-voting-common-foreign-and>

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AS IT WAS MENTIONED BEFORE, THE EUROPEAN PARLIAMENT HAS REALIZED THAT, IN THE LONG RUN, IT WOULD BE BETTER FOR THE EU AS A WHOLE, TO SCRAP THE EXISTING VETO MECHANISM, IN ORDER TO PREVENT DECISION-MAKING DEADLOCKS AND DELAYS FROM OCCURRING

ter establishes the general requirement of unanimity within the European Council and the Council of the European Union (simply referred to as 'the Council'), while adopting decisions concerning the common foreign and security policy.

Although such a mechanism was usually rather not problematic for most of the time, this has changed recently, especially as it was mentioned before, with the Russian full-scale invasion of Ukraine and EU's

response towards Putin's regime. Shenanigans around convincing all member states to support sanctions, which involved the European Commission's agreement to transfer funds to Hungary (much to EU Parliament's discontent¹⁴) have definitely proven how much of a burden it has become. It is especially apparent due to the fact that the 'green light' for the aforementioned funds was given in spite of severe infringements on the rule of law by the authorities in Budapest and the generally pro-Russian approach of Hungarian diplomacy¹⁵.

It would be difficult to imagine potentially 36 member states – some with completely different views and preferred approaches to tackling common challenges – agreeing unanimously to one solution, given how hard it is already. This is why it is essential for the EU to get rid of such a mechanism if it wants to improve its decision making and position in international affairs.

PROPOSED CHANGES: A STEP IN THE RIGHT DIRECTION

As it was mentioned before, the European Parliament has realized that, in the long run, it would be better for the EU as a whole, to scrap the existing veto mechanism, in order to prevent decision-making deadlocks and delays from occurring¹⁶. Such a realization by the MEPs has resulted in the preparation of the amendments to the existing EU treaties that were officially adopted by the res-

¹⁴ <https://www.europarl.europa.eu/news/en/press-room/20240112IPR16780/the-hungarian-government-threatens-eu-values-institutions-and-funds-meeps-say>

¹⁵ <https://www.osw.waw.pl/en/publikacje/analyses/20-23-10-19/orban-putin-meeting-beijing-hungary-drifting-away-west>

¹⁶ See: Motive B of the European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

olution of November 22, 2023. It is worth mentioning that this whole operation was done taking into consideration the potential enlargement of the EU in the future¹⁷, as well as tackling the existing and potential geopolitical challenges¹⁸. Therefore, it is essential to take a closer look at the final proposition of amendments concerning the common foreign and security policy, as presented by the European Parliament. In later segments of this article, we will also delve into the propositions in the areas of military and energy, as well as analyze whether they would be sufficient to enable the EU to deal with the upcoming issues.

Certainly, the most pivotal change is the increase in the number of areas where actions are decided by qualified majority voting (QMV) and through the ordinary legislative procedure (OLP), instead of acting unanimously. According to the European Parliament itself, the main purpose of such replacement is to strengthen the European Union's capacity to act¹⁹. Such a capacity is especially vital in the area of the common foreign and security policy; therefore, it should not be surprising that the QMV is meant to find its application upon taking the most important decisions in that area. The mentioned decisions would not only encompass the 'ordinary' foreign policy, but also the most important ones concerning the sanctions and interim steps in the enlargement process²⁰.

This development is connected with the proposed further development of the Union's shared competences in the areas of energy, foreign affairs, external security and defense, external border policy in the



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area of freedom, security and justice, and cross-border infrastructure²¹. One may ask why is that so important? The answer is pretty simple. What 'shared competence' means is that both the member states, as well as the European Union, may adopt legally binding acts in the area that is concerned. But the member state can act only provided that the EU has not exercised its power or has explicitly decided to cease doing so²². As a result, upon implement-

¹⁷ See: Motive D of the Resolution above.

¹⁸ See: Motive C of the Resolution above.

¹⁹ See: Motive 4 of the Resolution above.

²⁰ See: Motive 21 of the Resolution above.

²¹ See: Motive 15 of the Resolution above.

²² https://citizens-initiative.europa.eu/faq-eu-competences-and-commission-powers_en



REPLACING THE REQUIREMENT OF UNANIMITY WITH QMV WOULD ALLOW THE EUROPEAN UNION TO REACH AGREEMENTS EASIER AND FASTER

ing the aforementioned amendments, it would be drastically harder for member states to undertake diplomatic actions, regardless of the others or even as going against the EU's diplomatic stance. Hence, the already mentioned voices of concern, which portray such a change as a 'limitation of sovereignty'.

So, what are the real pros and cons of such a change? Certainly, it is easy to find the former since – as was already mentioned – replacing the requirement of unanimity with QMV would allow the European Union to reach agreements easier and faster. It would also mean that no single member state would be able to prevent the entire block from acting, just to gain leverage in negotiations. Possibly, it would also lead to the change of perspective for the decision-makers who would not have to worry about a possibility mentioned in the previous sentence on the one hand, but on the other hand, could face a growing number of situations where the principle of sincere

cooperation would find its application, thus leading to compromises.

Nevertheless, scraping the veto power would strengthen the already strong position of the biggest EU member states like Germany or France, at the expense of, for example, the Baltic states. This imbalance obviously creates a risk that it would be harder to block mistakes from occurring in the foreign policy of the entire block, if the biggest countries would decide to pursue them (like with their stance towards Russia before its full-scale invasion of Ukraine). Still, there are remedies to be found. For example, the weight of votes in qualified majority voting could be altered so that the voting power of the largest countries would be reduced²³. Apart from that, a mechanism could be introduced that in the event of one state being convinced that a decision would be taken against it, while this decision could impact its sovereignty, it could move the dispute to the European Council, which would decide unanimously²⁴. Such a mechanism shows that there are possible ways to replace unanimous voting with the QMV, while at the same time seriously addressing existing fears against such a change.

MILITARY UNION: STRONGER TOGETHER

As it was established earlier, the proposals of the amendments to the treaties, made by the European Parliament, touch also upon the area of military, and they definitely cannot be considered less important than the previously described change in the voting mechanism. Their importance stems from

²³ Such a possibility is presented by Professor D. Schwarzer, who is an expert working in the Franco-German group preparing the report on EU institutional reform. See: <https://wiadomosci.wp.pl/wielka-reforma-ue-ekspertka-z-perspektywy-niemiec-polska-jest-w-tej-debacie-kluczowa-6976438327954400a> [in Polish]

²⁴ Ibid.



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the fact that they go further than one could have anticipated. Full implementation of proposed changes would mean, first and foremost, the establishment of a defense union, which would include military units with a permanent rapid deployment capacity, under the operational command of the European Union²⁵.

²⁵ See: Motive 22 of the *European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

Essentially, this would amount to the creation of the joint European army, fulfilling an idea dating as far back as the year 1948²⁶. However, the creation of such units would not mean the dissolution of existing armies of the member states. It would simply add an additional layer of protection to the current ones. Due to the importance of such a step, it will be discussed further in the later part of this section.

But a European army is not everything envisaged by the European Parliament with regards to the area of the EU's defense. The MEPs saw a need for further integration of the procurement and the development of armaments which would be financed jointly by the European Union as a whole through a dedicated budget²⁷. This whole procedure would fall under parliamentary co-decision, as well as its scrutiny²⁸. Apart from that, the competences of the European Defense Agency would be adjusted to fit new arrangements²⁹.

All of this defense procurement would potentially mean a huge breakthrough for the European arms producers and EUs armaments production capabilities, which at the moment of writing this article, are unable to fulfill the demand for the defense systems in the wake of the Russian aggression³⁰. Such a change is especially needed, given the remarks made by possibly future (and

²⁶ Jurčák, V. and P. Poláček (2022) "The Need For The European Union Army/On Armed Forces", [in]: *Torun International Studies*, No. 2 (16). Available [online]: <https://apcz.umk.pl/TSM/article/view/40556/34650>

²⁷ See: Motive 22 of the *European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

²⁸ Ibid.

²⁹ Ibid.

³⁰ <https://www.politico.eu/article/europes-arms-production-is-in-deep-shit-says-belgian-ex-general/>

previous) U.S. president, Donald Trump, that the United States under his administration would not come to aid to some of its allies³¹.

Although the European Union has decided that the defense spendings would not be taken into consideration while crossing the excessive deficit procedure (EDP) thresholds³², it may prove to be not enough to kickstart the production of armaments and ammunition and thus joint procurement is urgently needed. Apart from that, arms procurement on the EU level could also potentially mean more initiatives like the Franco-German Main Ground Combat System (MGCS)³³, with more member states involved. This, in turn, would lead to bigger uniformity in equipment among their armies and, in consequence, to the better situation in terms of the logistics and supply during times of war.

What is extremely important, all changes mentioned above are meant to not be affecting the currently existing national traditions of neutrality, as well as the membership of the North Atlantic Treaty Organization (NATO)³⁴. Arrangements of this kind would allow countries such as Austria, on the one hand, and all those EU member states that are currently part of

³¹ <https://www.economist.com/leaders/2024/02/12/europe-must-hurry-to-defend-itself-against-russia-and-donald-trump>

³² Broda, K. (2024) *Domariski: Wydatki na obronność nie będą brane pod uwagę w procedurze nadmiernego deficytu*. Available [online]: <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9429903.domanski-wydatki-na-obronnosc-nie-beda-brane-pod-uwage-w-procedurze-n.html> [in Polish]

³³ <https://cepa.org/article/europes-next-generation-main-battle-tank-new-hope/>

³⁴ See: Motive 22 of the *European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL))*. Available [online]: <https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427-EN.pdf>

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THERE ARE POSSIBLE WAYS TO REPLACE UNANIMOUS VOTING WITH THE QMV, WHILE AT THE SAME TIME SERIOUSLY ADDRESSING EXISTING FEARS AGAINST SUCH A CHANGE

the NATO defense alliance, on the other, to participate in the defense union. Furthermore, joint military units would not necessarily mean a detriment to NATO, since additional powerful military force subordinated to a single decision-making center could mean a gain for the whole alliance³⁵. As a consequence, more countries would be protected from the common threats, while others would get additional security guarantees, which could be vital for the Baltic states for example, who are right now preparing for the worst-case scenario – full-scale Russian aggression³⁶.

Although old as it may be, the idea of a common European army refuses to die. What is even more interesting, it was

³⁵ Wróblewski, Ł. (2015) *Armia Europejska – marzenie czy rzeczywistość?*. Available [online]: <https://psz.pl/127-unia-europejska/armia-europejska-marzenie-czy-rzeczywistosc> [in Polish]

³⁶ <https://www.economist.com/europe/2024/02/10/as-donald-trump-threatens-nato-the-baltic-states-stiffen-their-defences>



FULL IMPLEMENTATION OF PROPOSED CHANGES WOULD MEAN, FIRST AND FOREMOST, THE ESTABLISHMENT OF A DEFENSE UNION, WHICH WOULD INCLUDE MILITARY UNITS WITH A PERMANENT RAPID DEPLOYMENT CAPACITY, UNDER THE OPERATIONAL COMMAND OF THE EUROPEAN UNION

found to be appealing even to the politicians that generally would not be associated with such a concept. For example, as previously mentioned in this article, Jarosław Kaczyński, who generally is not considered to be an enthusiast of deep integration among the EU member states, stated in 2010 that: “[t]he Union must get its hands on the creation of

a common army and this task cannot be continually postponed”³⁷. One year later, he went even further by saying that: “[w]e are for a Europe that will have its own strong and efficient armed forces, which would report to the president of the European Union. This would give the Union a real position as a world power”³⁸. He was not alone in such a statement, as in 2022, then Polish prime minister and de facto subordinate of Kaczyński, Mateusz Morawiecki, said in an interview for German newspapers that during the meeting of the EU Council he did propose the: “creation of a very strong European army, integrated into NATO”³⁹. Such European armed forces combined with doubling the EU’s defense spending would in his eyes, have allowed the European Union to become: ‘a global player’⁴⁰. These kinds of statements clearly indicate that such an idea could gain support even among some populist and euro-skeptical politicians and, therefore, is worth pursuing regardless of other proposed changes to the treaties.

However, one may ask what really is included in proposed amendments, as it is the text of the treaties that would form the legal obligations for the member states in the future. This is genuinely a good question. Therefore, now we will take a closer look at some proposed changes.

³⁷ http://jaroslawkaczynski.info/aktualnosci/artikul/a,139,Jaroslaw_Kaczynski_dla_Welt_am_Sonntag_Polska_chce_silnej_Unii_Europejskiej.html [in Polish]

³⁸ <https://demagog.org.pl/wypowiedzi/silna-armia-europejska-czego-chcial-jaroslaw-kaczynski/> [in Polish]

³⁹ <https://forsal.pl/swiat/unia-europejska/artykuly/8367426,morawiecki-potrzebujemy-silnej-armii-europejskiej.html> [in Polish]

⁴⁰ Ibid.

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ALTHOUGH OLD AS IT MAY BE, THE IDEA OF A COM- MON EUROPEAN ARMY REFUSES TO DIE

The alteration of common defense policy starts with the amendment 51⁴¹ proposed by the European Parliament. Apart from implementing common procurement and development of armaments, which are to be financed from the EU's budget, within the framework of the common security and defense policy, it states that: “[the common security and defense policy] shall enable the Union to defend Member States against threats”⁴². This is a substantial change, since the existing versions of the treaties (in this case, TEU) do not include such a statement.

But this peculiar ‘revolution’ with regards to the defense policy does not end there, since the next amendment in line explicitly states that: “[the Union shall establish a Defense Union with civilian and military capabilities for the implementation of the common security and defense policy”⁴³. Its provisions also establish the military units

with ‘permanent’ and ‘rapid deployment capacity,’ which are meant to be ‘under the operational command of the Union.’ This amendment would also give member states an opportunity to voluntarily provide ‘additional capabilities’ and ‘establish multinational forces’, which may be made ‘available to the common security and defense policy.’ This intent proves that the creation of a defense union and creation of military units under the command of the European Union would not preclude further existence of the militaries of the member states. Such a change would only lead to an increase in the security of the entire block.

Said increase in security is further reassured by the proposed amendment number 55. This amendment states that: “An armed attack on one Member State shall be considered to be an attack on all Member States”⁴⁴. The most obvious similarity that one can see is to the famous article 5 of the North Atlantic Treaty. This provision of the Washington Treaty (as it is also known) says that “[the Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all [...]”⁴⁵. From the point of view of the easternmost EU member states as well as potential newcomers to this group, this would be the most welcomed change. It would give them further reassurance with regards to their security, while, at the same time, reminding the ‘old members’ that their interest also lies to the east and that the fears of their colleagues cannot be ignored. Not to mention the fact that for countries like Moldova or Georgia,

⁴¹ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

⁴² Ibid.

⁴³ See: Amendment 52 of the Resolution above.

⁴⁴ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

⁴⁵ NATO (1949) *The North Atlantic Treaty*. Available [online]: https://www.nato.int/cps/en/natolive/official_texts_17120.htm

which have unresolved border disputes, this would mean potentially the only opportunity to join a powerful defense block and improve their security.

The last (but very not least) amendment worth mentioning is the amendment number 56. It gives the European Union the possibility to use 'civilian and military means' in order to combat "*hybrid threats [...] warfare, energy blackmail, cyberthreats, disinformation campaigns and economic coercion by third countries*"⁴⁶. Usage of such tools could definitely be seen against the Russian Federation as it undertook many actions (as mentioned above) against the EU member states⁴⁷.

Regardless of whether the proposed amendments would find their way to the future shape of the EU treaties, it seems evident that the entire block has to deepen its cooperation in the area of defense. Any setback to that process could risk the stability of the European Union as a whole and may prove fatal in the long run⁴⁸. European politicians cannot forget that, with growing isolationist tendencies in the United States, the EU's defense cannot rely solely on NATO (which, in reality, means reliance of American guarantees). Although the growing number of politicians across the pond embracing the 'America First' ap-



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⁴⁶ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

⁴⁷ A prime example would be failed energy blackmail of the EU after the full-scale Russian aggression on Ukraine. See: <https://www.reuters.com/world/europe/putins-energy-blackmail-europe-has-failed-commissioner-says-2023-05-18/>

⁴⁸ Wróblewski, Ł. (2015) *Armia Europejska – marzenie czy rzeczywistość?*. Available [online]: <https://psz.pl/127-unia-europejska/armia-europejska-marzenie-czy-rzeczywistosc> [in Polish]

proach⁴⁹ is worrying, it should neither prevent the block from pursuing Atlanticist ties nor should it cause the EU to cease seeking enlargement. It simply means that the European Union must prepare for the worst-case scenario – as in the Roman proverb, '*si vis pacem, para bellum.*'

⁴⁹ <https://www.nationalreview.com/corner/ukraine-and-america-first/>

THE ENERGY UNION: A SHIELD AGAINST BLACKMAIL

The prospect of further integration does not end on the defense union. The MEPs saw a need for further cooperation in the energy sector and proposed a few changes to the treaties which, for some, may seem purely 'cosmetic' at first glance. But the reality is different. Though their implementation would not mean 'revolution,' (as, for example, the defense union mentioned above) they would, nevertheless, constitute an important milestone in the process of building the EU's energy security.

But before taking a closer look at the proposed amendments, it would be worth presenting, at least briefly, the way things stand currently with regards to the energy union. The concept itself was introduced by the European Commission back in 2015, in response to a request made by EU heads of state and government⁵⁰. It was supposed to rest on five pillars: energy security, integrated internal energy market, energy efficiency, decarbonization of the economy, research and innovation⁵¹. One year later, the Commission proposed a set of regulations called 'Clean energy for all Europeans' with the aim of bringing the idea into life⁵². After a few years of deliberation between parties, all pieces of legislation that were meant to constitute the mentioned package were adopted by May 2019, thus completing the creation of the energy union⁵³.

Still, challenges exist. Even though the EU's attempts to diversify its energy imports away from Russia succeeded – thanks to the initiatives like 'AggregateEU' or 'REPowerEU'



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plan⁵⁴, – it seems that the European Parliament sees an urgent need for an even greater number of common projects. Hence the proposed amendments to the treaties.

In motive 33 of the 'Proposals of the European Parliament for the amendment of the Treaties', the MEPs called for "the creation of an integrated European energy union"⁵⁵.

⁵⁰ <https://www.consilium.europa.eu/en/policies/energy-union/>

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ https://energy.ec.europa.eu/news/focus-eu-energy-security-and-gas-supplies-2024-02-15_en

⁵⁵ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

They also suggested that the energy system should be ‘affordable,’ ‘based on energy efficiency’ and ‘renewable energies,’ whilst, at the same time, remaining in conformity with EU’s international obligations with regards to tackling the climate change. This may seem like not a massive change, but the devil is in the details.

Frankly, it lies within the proposed amendment number 162. It states that: “[i]n the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, the common energy policy of the Union shall aim, in a spirit of solidarity between Member States, to: [...]” and is, generally, very similar to the already existing provisions. But although the change may seem minor, it is in fact the opposite due to the introduction of the ‘common energy policy’, while, at the same time, retaining the crucial ‘spirit of solidarity’. Both ‘common energy policy’ and ‘spirit of solidarity’ indicate the next step in the integration of the energy systems of the member states, which could only result in greater security, potentially lower energy prices, and a better negotiating position of the European Union as a whole in the long run⁵⁶.

The aforementioned ‘spirit of solidarity’ also plays an important role in this process. Although it is nothing new, its retainment is definitely reassuring for the countries like Poland or the Baltic states, not to mention the potential new members. It is an important provision that helps safeguard energy interests of smaller member states against their bigger partners, which could be seen in the case C-848/19 P Germany vs Poland

(the OPAL pipeline case)⁵⁷. The General Court has found the ‘spirit of solidarity’ to be one of the fundamental principles of EU law, closely linked to the principle of sincere cooperation and producing binding legal effects. As a result, legitimate concerns of member states regarding their energy security should be taken into consideration by the European Commission and other member states while undertaking actions connected with the energy sector.

Finally, there is also another important aspect of the energy union that would be minimally altered by the proposed changes but could only bear a positive outcome. It has to do with the interconnection of energy networks. The amendment number 165 aims to replace the existing provision of ‘promoting’ the interconnection of energy networks, with ‘ensuring’ that it would be achieved⁵⁸. Thus, the already existing policy of the ‘Trans-European Networks for Energy’ (TEN-E)⁵⁹ would be effectively entrenched on the treaty level. This is a most welcome news, as TEN-E is focused on linking the energy infrastructure of EU countries and, in consequence, strengthening the energy security of the member states. Therefore, it would also have a profoundly positive impact on potential member states, like Moldova, who would not be such an easy target of blackmailing

⁵⁶ A good example of such initiatives being profitable for the EU is ‘EU Energy Platform.’ See: https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en

⁵⁷ Info CURIA (2021) *Judgment of the Court (Grand Chamber) C-848/19 P*. Available [online]: <https://curia.europa.eu/juris/document/document.jsf?jsessionid=6F783B847D6FB8D92B524D07FBF0BFDE?text=&docid=244187&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2118374>

⁵⁸ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

⁵⁹ https://energy.ec.europa.eu/topics/infrastructure/trans-european-networks-energy_en



THE GENERAL COURT HAS FOUND THE 'SPIRIT OF SOLIDARITY' TO BE ONE OF THE FUNDAMENTAL PRINCIPLES OF EU LAW, CLOSELY LINKED TO THE PRINCIPLE OF SINCERE COOPERATION AND PRODUCING BINDING LEGAL EFFECTS

as it was in the past⁶⁰. Overall, the proposed amendments in the energy sector are worth pursuing, just as the provisions about the defense union, regardless of the changes to the voting mechanism.

FDI SCREENING: PROTECTING EUROPEAN INTERESTS

Lastly, the European Parliament saw a need for changing the existing legal framework concerning the Foreign Direct Investments (FDI) and their screening mechanism. It is not a surprising step, given the growing presence of Chinese companies

in the sectors and infrastructure crucial for the security interests of the European Union⁶¹. Adding to the inefficiency of already existing mechanisms⁶², it is easy to see why the MEPs decided to call for the establishment of the permanent FDI screening mechanism on the level of the entire European Union.

It is best depicted by the motive 29 of the 'proposals of the European Parliament for the amendment of the Treaties', in which it is proposed to "establish a permanent mechanism for the screening of foreign direct investment"⁶³. This aim would be achieved by the amendment number 177, which states that: "[a] permanent mechanism to monitor and examine foreign direct investment in the Union shall be established. This mechanism may be used to protect the European interest."⁶⁴ The latter part clearly demonstrates what should constitute primary purpose for which the mentioned mechanism would be introduced.

Such propositions go very much in line with the European Economic Security Package (EESP) published by the European Commission, which includes a proposal to reform the EU Regulation establishing a framework for Foreign Direct Investment screening⁶⁵. Just as the amendment mentioned

⁶¹ Like, for example, with the Hamburg port. See: <https://www.dw.com/en/germany-inks-deal-with-chinas-co-sco-on-hamburg-port/a-65586131>

⁶² <https://www.fieldfisher.com/en/insights/eu-commission-publishes-proposal-for-the-fdi-screening-regulation>

⁶³ European Parliament (2023) *European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0427_EN.pdf

⁶⁴ Ibid.

⁶⁵ <https://www.covingtonblogs.com/2024/01/27/draft-eu-screening-regulation-a-new-chapter-for-screening-foreign-direct-investments-in-the-eu/>

⁶⁰ <https://www.euractiv.com/section/global-europe/news/moldova-accuses-russia-of-energy-black-mail-ready-for-any-scenario/>

above, it seeks to mitigate problems arising from already existing provisions – mainly insufficient cooperation between screening authorities and substantial differences between screening mechanisms across the member states⁶⁶. Its main purpose would be to achieve a more efficient regime by harmonization of existing national screening rules across the EU⁶⁷ and making their existence mandatory (unlike currently existing arrangements)⁶⁸. Upon its implementation, all member states would need to ensure that their screening mechanisms would fulfil the minimum standards⁶⁹ required by the regulation⁷⁰. As a result, a larger number of foreign investments should fall under the scope of the screening framework, including also indirect investments made by EU subsidiaries⁷¹. Coupled with the coordinated submission of foreign investment filings across the EU, better reporting measures, substantive assessment of an investment's possible impact on security or public order⁷², a new screening framework should ensure a greater degree of protection of the European interest.

⁶⁶ <https://www.fieldfisher.com/en/insights/eu-commission-publishes-proposal-for-the-fdi-screening-regulation>

⁶⁷ <https://www.ropesgray.com/en/insights/viewpoints/102iyvb/all-change-ec-publishes-proposed-reforms-to-eu-fdi-screening-regulation#page=1>

⁶⁸ <https://www.fieldfisher.com/en/insights/eu-commission-publishes-proposal-for-the-fdi-screening-regulation>

⁶⁹ Among which are, for example: ability to conduct in-depth investigations, annual reporting on screening activities, introduction of a list of sectors that must be screened, obligation to assess the potential impact of the investment on critical infrastructure and ensuring investor's ability to seek judicial recourse.

⁷⁰ <https://www.ropesgray.com/en/insights/viewpoints/102iyvb/all-change-ec-publishes-proposed-reforms-to-eu-fdi-screening-regulation#page=1>

⁷¹ <https://www.covingtonblogs.com/2024/01/27/draft-eu-screening-regulation-a-new-chapter-for-screening-foreign-direct-investments-in-the-eu/>

⁷² *Ibid.*



TEN-E IS FOCUSED ON LINKING THE ENERGY INFRASTRUCTURE OF EU COUNTRIES AND, IN CONSEQUENCE, STRENGTHENING THE ENERGY SECURITY OF THE MEMBER STATES

Nevertheless, one may ask why this sort of regulation would be important in order to properly incorporate potential member states into the EU? The answer is simple. It creates a remedy for a potential future problem connected with investments made by for example China⁷³, since this sort of legislative mechanisms would have to be implemented during the procedure of adopting the 'acquis communautaire'⁷⁴. They also seek to implement better cooperation among the national authorities conducting the screening procedures, which, in consequence, could mean giving more insight to the institutions of future member states.

⁷³ <https://www.fpri.org/article/2023/09/china-continues-to-deepen-political-influence-in-georgia/>

⁷⁴ The body of common rights and obligations that is binding on all the EU member states.

CONCLUSIONS

In light of the evolving geopolitical landscape and growing prospect of the European Union's expansion by admission of new member states, this article analyses the potentially significant overhaul of the EU's common foreign and security policy that could happen upon introduction of the proposed changes to EU treaties. It addresses the inadequacy of currently existing arrangements to effectively respond to the challenges posed by aggressive third parties and internal squabbles. It also advocates for the necessity of a more active and robust stance in international affairs.

The proposed reforms focus on abolishing the unanimity requirement in decision-making, which has often hindered swift EU responses to crises. This would happen by application of qualified majority voting to larger number of situations. Such a change aims to enhance the EU's agility, as well as its unity in the area of foreign policy and security. Although there are potential arguments against such a reform, there already exist ideas that could help mitigate potential problems and would soothe fears voiced by some (like previously mentioned Jarosław Kaczyński) in the public debate.

Furthermore, this article highlights the critical need for deeper integration in defense and energy sectors. These areas are crucial for the security of EU member states and, therefore, integration within them should be pursued. Implementation of proposed changes within these areas would mean the creation of an additional layer of protection, which could prove to be crucial for some of the member states (including the future ones). Not to mention that deepening integration in both mentioned sectors may also prevent the isolationist tendencies in the United States from having as profound effect on the EU security as it

would have without the implementation of the defense and energy unions.

Apart from that, this article aims to show that there is a need for the establishment of a more effective mechanism for screening foreign direct investments, particularly from potential rivals of the entire block. Fortunately, there are already planned steps in that direction. The European Commission proposed a new regulation in that matter. Its implementation could lead to better monitoring of the foreign direct investments, as well as better transmission of information and experience among EU member and potential member states.

These changes seem to be essential for the European Union to maintain its competitive edge, ensure its security, and provide a chance for a successful integration of the new members. Therefore, one may say that this article aims to show a vision for a better integrated, powerful, and active EU, capable of navigating and shaping global politics in a way that would safeguard its interests and those of its member states.



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ERYK
ZIĘDALSKI

Junior Legal Analyst at the Civic Development Forum (FOR) in Warsaw, Poland. Member of the Liberty Forum Poland since 2019. Author of series of publications "Freedom in the World", co-author of the publication "10 Market Solutions for Climate", as well as co-organizer of the "Rzeczpospolita 5.0" idea hackathon. He is interested in public economic law (especially in anti-trust law), administrative law, history, and international politics