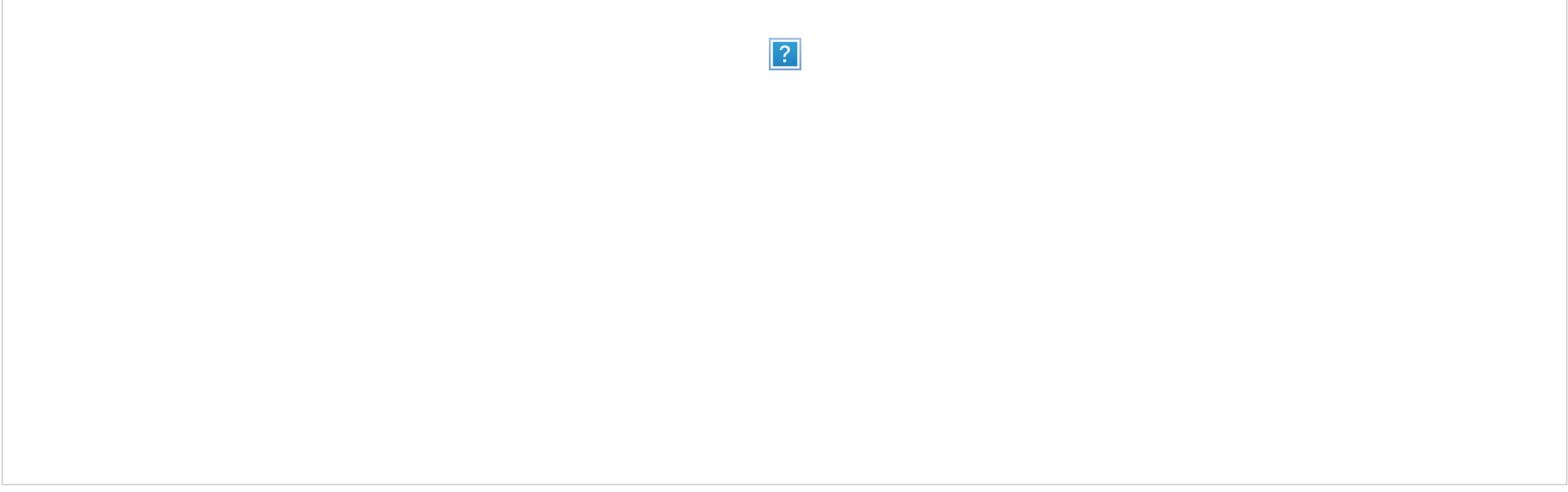




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The right of veto as a hand grenade in the European Council

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By Leo Klinkers |

The European Council of 27 heads of state and government takes decisions by consensus. If one or more members do not support a decision because it threatens their national interests, there is no consensus, and the decision does not go through. From this procedure, one deduces that the Council takes its decisions by unanimity. And so, in the event of a vote against, there is a right of veto. It has been argued several times that this should be partially abolished and that decisions on subjects such as foreign and security policy should be made by qualified majority voting. That has always been rejected. On 24 March 2021, the Dutch Prime Minister Mark Rutte and his Spanish colleague Pedro Sánchez sent to the President of the European Council Charles Michel, the President of the European Commission Ursula von der Leyen and to the current EU President António Costa a discussion paper on strengthening Europe's strategic autonomy. To this end, they advocate the partial abolition of the right of veto. In doing so, a few months after the dearly bought peace on the multiannual EU budget – following Hungary's and Poland's threat to vote it down – they are throwing a hand grenade into a group of people whose nerves are already frazzled. Will someone throw back the grenade or pull the pin?

It is not Rutte's first time

In his 'Churchill lecture' of 13 February 2019, Mark Rutte already advocated the partial abolition of the unanimity principle in the European Council. The common thread of his lecture was: 'stop the naivety of soft power based on principles and values; start using the hard power of realpolitik instead; don't be afraid to acquire that hard power with inflexible trade policy; values like democracy and human rights are nice, but the EU has to become a geopolitical superpower, if necessary, through street fights.' To this end, he believes that the principle of unanimity should be abolished; only in this way can the EU exert influence externally (geopolitically) and act more decisively internally (within the intergovernmental EU); but the abolition of unanimity should be limited in its subjects, for example, to the imposition of sanctions – by majority vote – on countries outside the EU, such as Russia, Syria and Iran.

In that lecture, Rutte echoed the view of Emmanuel Macron's 'Sorbonne lecture' of 29 September 2017. Macron then advocated a radical reorganization of the EU system which, in his view, could only take place by deciding more decisively in the European Council and thus by abolishing the principle of unanimity.^[1]

What is the difference with Rutte's commitment of February 2019?

The main difference is the fact that the new plea for the partial abolition of the unanimity principle, and thus the removal of the right of veto on certain subjects, is not being launched in a lecture somewhere in Europe, but officially in a discussion paper to the three administrative EU-presidents. And so, it is no longer a trial balloon, but a serious matter.

How will Hungary and Poland react to this letter?

A few months ago, in early December 2020, Hungary and Poland agreed to the compromise on the EU's multiannual budget. At issue was the European Council's intention to impose sanctions on both countries for weakening democracy and the rule of law in their country. They opposed the imposition of sanctions by threatening to use their right of veto to vote down the multiannual budget. The conflict was appeased with the decision to refer the matter to the Court of Justice. This bought two years of relative calm.

This discussion document, however, puts an end to that calm after only three months. The very fact that it exists – quite apart from the question of whether the EU-Presidents will do anything with it – will reignite the conflict. It is likely that both countries will demand that the partial abolition of the veto be taken off the table. The fact that it is only meant to be more effective externally will not allay their fears that majority voting will also become the norm internally and thus turn against member states that do not abide by the rules. After all, this was already tried in the autumn of 2020 with these sanctions on Hungary and Poland. It is likely that other Member States will also feel threatened in advance and will support Hungary and Poland in their opposition to the partial abolition of the veto.

Working with unanimity is a backward way of decision-making

Making decisions based on the principle of unanimity, and therefore with the right of veto, is a tool for EU-politicians who do not feel like guardians of European interests. Adherence to that principle is one of the signs that the European Union is acting solely on the basis of national interests. Not from an internalized awareness of European interests. The Union is merely an accumulation of national interests and, because of the treaty system, can be nothing other than a constant exchange of Member States' interests.

So, strictly speaking, a plea for the abolition of the right of veto is only to be welcomed. In this case, however, it is different. Abolishing the right of veto in the Council makes it even more undemocratic. It reinforces the oligarchic structure and culture within the Council. While the European Council in itself is an oligarchy within the overall EU system of 27 members who can make decisions without being held accountable, there is an additional oligarchy within that Council in that France and Germany call the shots. If the right of veto is abolished, it will be much easier for this small group to manoeuvre a majority behind its proposals. This means even more uncontrollable power in even fewer hands.

The European Council dictates the political direction of the EU

The power of the ER is shown, among other things, by the following. It is the only body of the European Union that can decide that the EU-treaties should be revised; it elects its President by qualified majority; it nominates the President of the European Commission and also the EU High Representative for Foreign Affairs and Security Policy; it appoints the members of the European Commission and the President of the European Central Bank. While the nomination of the President of the European Commission requires the approval of the European Parliament, the way in which that Parliament's preferred candidate was passed over by the Council in July 2019, in favour of the nomination of Ursula von der Leyen, says enough about the power of the European Council: 'where power rules, justice fools'.

Will the European Union collapse as a result?

The choice for a treaty-based system in accordance with the Schuman Declaration of 9 May 1950 – has made the post-war European state system increasingly vulnerable. Schuman understood very well that Europe had to become a federal state (based on Spinelli's Ventotene Manifesto) but – partly on the advice of Jean Monnet – made the unforgivable mistake of choosing a system of treaties as the legal basis for this. But a federal state requires a constitution: of, by and for the people. With three separate powers – legislative, executive, and judicial – balanced by a system of checks and balances. With democratic accountability. Without a ridiculous, undemocratic, and dangerous institution like the European Council.

The treaty system has turned the EU into a hotbed of tension and conflict. Rutte and Sánchez's discussion paper will reinforce the structural divisions within the European Council. Russia – always busy with divide and rule techniques – follows the internal quarrels smilingly and will abuse this. For example, by seizing part of the Baltic States. After all (following Hitler's annexation of Sudeten-Germany), this was easily done in Georgia and Ukraine.

The ability to soothe EU's ever flaring tensions and conflicts is coming to an end. The energy to apply sticking plasters to open wounds has run out. The EU-treaty system is clinically dead. The European Union is on the verge of collapse. It would be going too far in this article to describe in detail how far the EU has gone off course and is heading for a systemic crisis that will engulf Europe. For the sake of brevity, I refer to Chapter 2 of the 'Constitutional and Institutional Toolkit of Establishing the Federal United States of Europe'^[2]

There is no doubt that the European Union is going to collapse. The only question is: what will trigger it? The discussion paper by Rutte and Sánchez? Will Hungary and Poland pull the pin from this hand grenade and blow up the EU in the process?

What Rutte and Sánchez are striving for, namely strengthening the EU's position in the geopolitical arena, can only be realised in a federal Europe: the United States of Europe. If possible, led by Italy, fulfilling Spinelli's legacy. Unfortunately, it will take a comprehensive systemic crisis for EU leaders to understand this. The people of Europe will be the victims but will not be able to hold anyone to account.

[1] See L. Klinkers, 'Macron and Rutte: intergovernmentalism 2.0', in: Europe Today Magazine, 3 May 2019.

[2] Download the Federal Alliance of European Federalists 'Constitutional Toolkit': <https://www.faef.eu/request-for-toolkit/>

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