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WORKING DOCUMENT

on the community method and intergovernmentalism

Committee on Constitutional Affairs

Rapporteur: Domènec Ruiz Devesa

A. Overview of Parliament positions

Introduction

Although EU treaties do not provide a definition of the community method or inter-governmental procedures, it is widely accepted that the community method gives precedence to the role of supranational decision-making bodies, and that it is in essence embodied in Article 294 of the Treaty on the Functioning of the European Union (TFEU) as the ordinary legislative procedure. It means therefore that the right of legislative initiative lies with the European Commission, while Parliament and the Council have co-decision powers with equal rights and obligations. The Council acts by qualified majority and the European Court of Justice has a full oversight role. After the formal introduction of the ordinary legislative procedure in the Maastricht treaty in 1992, its use has been continuously extended and simplified by each treaty revision. The Lisbon Treaty transferred the second and third pillars from the intergovernmental method to the community method ('communitisation'), extending the ordinary legislative procedure to 85 policy areas¹. Parliament has insisted on the decision-making efficiency and democratic legitimacy of this method.

The community method stands in contrast to intergovernmental method, where the Commission's right of initiative is shared with the Member States, or covers only specific areas. Under the intergovernmental method, the Council acts by unanimity and Parliament is only consulted (or asked to grant its consent). It is used in policy areas where the European Council often has a leading role - mainly common foreign and security policy (CFSP) matters, several aspects of police and judicial cooperation, institutional provisions such as the establishment of enhanced cooperation or the activation of *passerelle* clauses, treaty revisions, accession of new Member States and certain appointments. It was revived for the revision of economic governance rules in the context of the financial crisis.

Debate on how to find a balance between supranational and intergovernmental methods has resurfaced also in policy-making discussions about the use of the open method of coordination (OMC). The OMC is considered a soft law intergovernmental instrument for ensuring convergence in areas that are the partial or full competence of Member States. It does not lead to the adoption of binding EU legislative measures or require Member States to introduce new laws. Its efficiency has been questioned by Parliament, in particular for economic governance.

Benefits of the community method

Parliament has consistently stressed the structural advantages of the community method compared to intergovernmental approaches. In procedural terms, it has highlighted its transparency and efficiency, which means that the method is 'best suited for the functioning of the Union' 'as it is the only one that allows for greater transparency, efficiency, QMV [qualified majority voting] in Council, and the equal right of co-legislation by the European Parliament and Council'². Institutional discussions have focused on the capacity of the community method to prevent the fragmentation of institutional responsibilities and the

¹ See Annex 1

² European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (OJ C 252, 18.7.2018, p. 215)

development of competing institutions. Even for the deployment of flexibility instruments such as enhanced cooperation, Parliament's view is that a 'single institutional framework should be preserved'³.

Essentially, for Parliament the community method, which it also referred to as the 'Union method' its resolution of 16 February 2017, draws its ultimate legitimacy from the fact it 'ensures that all interests, especially the common European interest, are taken into account', and should be scrupulously respected 'even in cases of urgency'⁴.

Limits on the use of intergovernmental solutions

However, in particular in the context of the management of the financial crisis and the establishment of three intergovernmental agreements⁵, Parliament has insisted that intergovernmental solutions should only be deployed in a limited way. It also defined strict conditions under which they can be used: 'intergovernmental solutions should only be an instrument of *ultima ratio*, subject to strict conditions, notably respect for Union law, the objective of deepening European integration, and openness for accession by non-participating Member States'⁶. According to Parliament, such solutions lead not only to less effective policy-making, but also contribute to a growing lack of transparency, accountability and control. Similarly, Parliament has insisted that any such solutions should be integrated in the EU legal order and 'replaced by Union procedures as soon as possible'⁷.

In terms of other instruments adopted as a corollary to intergovernmental solutions, the most notable example is the Euro Plus Pact of 2011, which was introduced by means of the open method of coordination. As it did not entail any legal obligations and enforcement mechanisms, it has largely remained dormant and has received little attention in Member States. Given these deficiencies, in 2012 Parliament already called for its integration into EU law⁸. However, the Commission has not yet proposed a roadmap to revive the Euro Plus Pact or to integrate it into EU law, and the Euro Plus Pact is mentioned neither in the letters of intent accompanying the 2017 and 2018 State of the Union speeches, nor in the Commission Work Programmes.

Negative role of the European Council

Parliament has been critical of the fact that the multiplication of intergovernmental solutions

³ European Parliament resolution of 12 February 2019 on the implementation of the Treaty provisions concerning enhanced cooperation (Texts adopted, P8_TA(2019)0077).

⁴ European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (OJ C 252, 18.7.2018, p. 201).

⁵ Treaty on Establishing the European Stability Mechanism (2012), Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (2013), Intergovernmental Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund (2014).

⁶ European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (OJ C 252, 18.7.2018, p. 215), paragraph 7.

⁷ European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (OJ C 252, 18.7.2018, p. 215), paragraph 7.

⁸ European Parliament resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union' (OJ C 419, 16.12.2015, p. 48).

works to the detriment of the community method. As a corollary to this, Parliament has also consistently been critical of the Council, and in particular the European Council. According to Parliament, the European Council has overstepped the boundaries of its competences enshrined in Article 15 of the Treaty of European Union (TEU) by acting as a de facto legislative body, despite the Treaty prohibition to exercise such a legislative function, and is only supposed to provide the Union with the necessary impetus for its development and define its general political direction and priorities. In its resolution on relations between the European Parliament and institutions representing national governments⁹, Parliament insisted that the European Council unilaterally expanded its role by increasing its number of extraordinary meetings and by submitting matters to the European Council that are usually dealt at the Council of Ministers level. It highlighted the fact that the European Council has been calling into question the legislative agreements between the Council and the Parliament on at least three occasions: economic governance, the EU banking supervisory authority and the European patent system.

Use of decision-making flexibility instruments within the EU legal framework

Instead of opting for intergovernmental solutions outside the EU framework, Parliament has insisted on the need to use a flexibility instrument in the EU treaties – the *passerelle* clause - which allows legislative procedures to be changed without amending the treaties. In its resolution on the debate on the future of Europe¹⁰, it therefore advocated the activation of general *passerelle* clauses (Article 48(7)(1) and 48(7)(2) of the TEU) and other specific *passerelle* clauses. It welcomed proposals to activate these clauses in a number of areas suggested by the President of the Commission in his State of the Union speeches in 2017 and 2018, related in particular to taxation and external relations¹¹. Parliament regretted nevertheless that the multiannual financial framework (MFF) is not among the policy fields where the Commission would propose activation of QMV. In its resolution on Possible evolutions of and adjustments to the current institutional set-up of the European Union¹², Parliament strongly advocated the alignment of decision-making procedures for the MFF and own resources, thereby achieving genuine co-decision between Council and Parliament on all budgetary matters.

Subject to specific conditions, Parliament accepted the use of enhanced cooperation as an additional flexibility instrument, although it is introduced through an inter-governmental procedure. In such cases, it should nevertheless preserve the unitary institutional framework and integrity of the EU institutions, and should fall under the direct jurisdiction of the Court of Justice of the European Union. However, Parliament insisted that where possible the Council should activate the special *passerelle* clause enshrined in article 333(2) of the TFEU in cases where the Treaties may be applied for enhanced cooperation and to switch from the special to the ordinary legislative procedure. It also urged participating Member States to

⁹ European Parliament resolution of 12 December 2013 on relations between the European Parliament and the institutions representing the national governments (OJ C 468, 15.12.2016, p. 187).

¹⁰ European Parliament resolution of 13 February 2019 on the state of the debate on the future of Europe (Texts adopted, P8_TA(2019)0098).

¹¹ Notably for the Common Consolidated Corporate Tax Base, VAT, fair taxes for the digital industry and the Financial Transaction Tax, as well as for positions in international fora on human rights and civilian missions

¹² European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (OJ C 252, 18.7.2018, p. 201).

systematically work towards the integration of enhanced cooperation into the *acquis communautaire*¹³.

¹³ European Parliament resolution of 12 February 2019 on the implementation of the Treaty provisions concerning enhanced cooperation (Texts adopted, P8_TA(2019)0077), paragraphs 29 and 36.

B. Observations and avenues to be further explored

Political relevance of the community method

The community method¹⁴ is not only the result of the gradual establishment of European institutions and policies, but is also based on a clear vision of integration as a direct political follow-up to the principles of the Schuman Declaration of 1950¹⁵. Its main political feature is a unique and innovative framework for pooling and sharing political sovereignty, inspired by the principle of establishing a common polity based on common values, including solidarity.

Its capacity to adapt to different institutional and political scenarios over the recent decades of European integration confirms that the community method is still the best suited to overcoming transnational challenges together in an increasingly interdependent and globalised world, and to defending the foundational principles of our Union, such as the primacy of fundamental rights, representative democracy, and the rule of law.

Interpreting Jean Monnet's words¹⁶, the community method can be defined as a step towards the organisation of the world of tomorrow, since it has paved the way for the establishment of an original and unprecedented European political system, oriented towards the goal of a federal union, and has shaped a genuine institutional architecture with a supranational dimension, able to empower and implement transnational European solutions that are in the interest of the entire Union.

The essential and original features of the community method still constitute a well-established pathway towards the next steps of European integration, notably by defining a new mode of interaction between Member States and citizens, well beyond the usual limits of international law, under which states claim absolute external sovereignty. The co-decision procedure, now the Union's ordinary legislative procedure, involves Parliament (chamber of the citizens) and Council (chamber of the Member States), and is the most outstanding result of this model of integration.

Community method and intergovernmentalism: assessment and future perspectives.

In the permanent and still ongoing tension between community method and intergovernmentalism, the former has shown a capacity for great resilience and adaptability, since it has also been extended over the past few years to new policy areas, some of which (for instance monetary policy or justice) are historically under the traditional sovereign authority of Member States. Throughout the history of EU integration, the community

¹⁴ https://ec.europa.eu/commission/presscorner/detail/en/MEMO_02_102

¹⁵ See also: AFCO working document on the 70th anniversary of the Schuman Declaration, May 2020
<https://www.europarl.europa.eu/committees/en/70th-anniversary-of-the-schuman-declarat/product-details/20200611CDT03881>

¹⁶ Jean Monnet: «*Les nations souveraines du passé ne sont plus le cadre où peuvent se résoudre les problèmes du présent. Et la Communauté elle-même n'est qu'une étape vers les formes d'organisation du monde de demain*» ('The sovereign nations of the past can no longer solve the problems of the present: they cannot ensure their own progress or control their own future. And the Community itself is only a stage on the way to the organised world of tomorrow'), in «*Mémoires*», Fayard, Paris, 1976, p. 617.

method has proved able to integrate instruments designed to meet new functional needs, not only as a consequence of the enlargement processes, but also due to the development of new competences, bodies and agencies¹⁷.

The relation between the two principles has always constituted the central element of every debate on Europe's future: it's worth recalling that at the time of the negotiations on the 'constitutional treaty', for instance, a group of European Convention members, most of them from the smaller Member States, chose to call themselves 'friends of the community method'¹⁸.

The community method, despite the direct challenge of alternative theories for new forms of governance – such as the Union method outlined by Chancellor Merkel in her speech in Bruges in November 2010¹⁹ - has shown its capacity to adapt, and has proved to be the only viable approach to European integration.

In fact, despite several statements about its alleged obsolescence²⁰, the community method remains the main functioning driver at EU level, and has also shown its capacity to be the most efficient and democratic decision-making process in the history of EU integration. Its scope has been steadily extended through various treaty reforms, and the response to the eurozone crisis has shown once more that the delegation of powers to supranational institutions is almost unavoidable when governments intend to reinforce their cooperation in a lasting manner.

Furthermore, the twofold increase in the number of Member States through the enlargement processes of 2004 and 2007 does not appear to have had a negative impact on the functioning of the whole system, which is further positive proof of the effectiveness of the method.

In the continuous trade-off between the supranational and inter-governmental dimension throughout the history of EU integration, we can observe a dynamic with a permanent trend of governments showing signs of impatience with what many of them have seen as an unlimited expansion of Europe's powers, symbolised by the Commission, with the consequence that they increase their own counterbalancing powers.

¹⁷ In: Costa, O. 'The European Parliament and the Community Method', in *The 'Community Method' Obsolete or Obsolete?*, R. Dehousse (ed), Palgrave Studies in European Union Politics, 2011.

¹⁸ <https://core.ac.uk/download/pdf/144226687.pdf> *Fordham International Law Journal* Volume 29, issue 5, 2005.

¹⁹ <https://www.coleurope.eu/events/mrs-angela-merkel-delivered-opening-address-opening-ceremony>. See also: Eijssbouts, W.T. and Reestman, J.H., 'In search of the Union Method', *European Constitutional Law Review*, Vol.11 (3), Cambridge University Press, 2015, pp.425-433.

²⁰ See also DG IPOL Study, *Challenges of multi-tier governance in the European Union. Effectiveness, efficiency and legitimacy - Compendium of notes*, in particular 'Is the Community Method still relevant?', Dehousse, Renaud: 'Around twenty years ago, British Prime Minister John Major described the so-called 'Community Method' as 'an idea whose time has passed' to explain the need to experiment with new forms of transnational cooperation. Those were the days of the Maastricht Treaty, when intense discussion of 'political union' was already taking place. The Prime Minister's view was not isolated. It was echoed in the works of influential British think-tanks (see e.g. Leonard, 1999) and the European Commission itself found it necessary to define its doctrine on 'new modes of governance' in a much-discussed White Paper'.

Indeed, every time any evolution in European integration has taken place, governments have responded by setting up ad hoc structures with new powers: for instance, the new hybrid role of the High Representative of the Union for Foreign Affairs and Security Policy, the establishment of the Eurogroup and its President, and finally the introduction of a permanent President of the European Council. These recent developments in institutional change, based on the rationale of growing intergovernmentalism, has ultimately worked to the advantage of the European Council, which was raised to the rank of Union institution by the Lisbon Treaty, and whose primary role has also been confirmed in the last decade during the sovereign debt crisis. Beside the institutional framework, the same process has emerged very clearly if we consider the evolution of the Union's policies: in parallel to the increase of competences subject to co-decision and the community method, some policies have remained 'captured' in the intergovernmental dimension (for a more detailed overview of the division of policies under the community or intergovernmental method, see also the table annexed to this working document). Furthermore, the unjustified extension of the European Council's powers beyond purely political guidance (so-called micro-management) has not happened by chance. This has become vividly apparent after the Lisbon Treaty: the recent European Council conclusions of December 2020 on the rule of law are just the most recent evidence of this ongoing trend.

This practice is not only reflected in the political attitude of the European Council that it can take decisions beyond its competence - it has also resulted in a deep concentration of political power among European leaders and their chief advisors (the so-called 'sherpocracy') in some particularly delicate situations in recent years.

From the same viewpoint, the European Commission must be called on to apply the community method in full: the lack of attractiveness of the community method in recent cases (for instance for matters falling under Article 7 of the TEU), also highlighted in some critical remarks in this working document, is primarily due to the European Council's insufficient political ambition to make best use of all available tools.

Further evidence of this tension can be found in the response to the euro crisis ten years ago that led Member States to conclude a set of intergovernmental treaties outside the EU framework (European Financial Stability Facility, European Stability Mechanism, Fiscal Compact) and to agree on new arrangements beyond the traditional 'community method' (Euro Plus Pact). According to some commentators at that time, these could have created the danger of a more permanent 'two-speed' or even 'two-tier' Europe, increasing the gap between euro and non-euro countries²¹.

In this perspective, and looking at the current debate on the possible reform of the Treaties, institutional improvements are needed in order to apply the community method with enhanced parliamentary control and full judicial review to economic and financial policies so

²¹ See also *Challenges of multi-tier governance in the European Union - Effectiveness, efficiency and legitimacy - Compendium of notes*, in particular: Pernice, Ingolf, 'What future(s) of democratic governance in Europe: learning from the crisis'; Emmanouilidis, Janis A., 'Which lessons to draw from the past and current use of differentiated integration?', and De Witte, Bruno. 'European Stability Mechanism and Treaty on Stability, Coordination and Governance: Role of the EU Institutions and Consistency with the EU Legal Order', Conclusions of a Workshop on the challenges of multi-tier governance in the EU, DG IPOL Study 2013

as to remedy the structural asymmetry of the economic and monetary union (EMU) and the elements of differentiation outside the EU legal framework.

From a long-term perspective, and particularly with a focus on the decisions taken in 2020 as a response to the COVID-19 crisis, a new ‘community method momentum’ has been generated with the clear intention of strengthening the powers of the Union’s supranational institutions: the European Central Bank has been called on to play a role greatly resembling that of a lender of last resort, the Commission has enhanced its supervisory powers on the implementation of the Recovery Plans, and common EU bonds have been introduced through the creation of new own resources. Furthermore, the current COVID-19 crisis has generated some good examples, such as the rule of law conditionality on EU public money, were made possible only through the gradual extension of the community method.

In parallel to the permanent tension between the intergovernmental dimension and the community method, the parliamentary dimension has grown during the history of EU integration, and has emerged as key to the institutional developments in the near future. This permanent trend has in a way delivered on the original meaning of the community method, since with each treaty reform, Parliament’s legislative, budgetary and supervisory prerogatives have increased, and its status has been enhanced in the space of two decades from that of consultative assembly to co-legislator on an equal footing with the Council. This is even more important today in the current debate on Parliament’s right of initiative, particularly due to its possible impact on the balance of powers, as well as on the whole rationale of the community method.

In this respect, the community model owes a great deal to its flexibility and ability to adapt to the major innovations of the last two decades. However, the consensus-based approach in decision-making still remains a crucial feature for the political stability of the Union. At the same time, it’s also clear that the future of the EU depends on its capacity to go beyond the current consensus-based approach and to introduce stronger layers of democracy in its functioning (*Spitzenkandidat* principle, transnational lists, right of initiative, right of inquiry, etc.).

The natural evolution of the community method is leading towards a gradual shift of executive authority to the Commission, which needs to be turned into a genuine EU government. In this respect and in line with this historic trend, more coherent and effective decision-making can also be fostered by making the composition of the Commission reflect electoral outcomes better, as well as by rebalancing the role of the European Council.

In the same spirit, the future reform of the EU institutional system should be oriented towards improving the ‘quality and quantity’ of European democracy, as a true legacy of the community method. All available means under the current treaties should be used in order to improve Union decision-making, starting with the Council’s working methods, which should be more efficient and transparent, notably by respecting the provisions on the public nature of Council deliberations of the Council, and by respecting and making public Member States’ positions. While the consensus-oriented decision-making practice in this institution can be deemed valuable, Council should be able to decide by qualified majority voting in all policies (own resources, taxation, foreign policy, social affairs, etc.), initially by activating the *passerelles* in the Lisbon Treaty. This provision could evolve from a mere possibility

identified in the Lisbon framework into a tool of a genuine institutional reform consolidated during the process of a Treaty revision.

The momentum of the upcoming Conference on the Future of Europe will contribute to the goal of bringing about significant changes in the institutional architecture of the EU and reinvigorating the European project, based on the evolution and achievements of the community method, first of all with the aim of reflecting on the next steps for the communitisation of new policies.

C. Summary of discussions in the Committee on Constitutional Affairs

This working document was discussed by the Committee on Constitutional Affairs (AFCO) committee on 25¹ February 2021²². During the exchange of views, the rapporteur highlighted that the working document aims to deal with the permanent and still ongoing tension between the community method and intergovernmentalism, which has been part of every debate on the review of the EU institutional framework.

He presented the community method as a unique and innovative framework for sharing and pooling of sovereignty, in a spirit of mutual solidarity with the objective of establishing a common polity. The most salient feature of the community method has been its capacity to adapt and evolve in order to respond to the development of new Union competences which have been extended through successive Treaty reforms. He recalled that at as response to the economic and financial crisis of the 2008, the emergence of the so-called ‘Union method’, devised by the European Council and relying on intergovernmental decision-making, has created a serious democratic and institutional challenge to the community method. The latter, has nevertheless proved resilient as it has not been affected by the substantial increase in the number of Member States through successive enlargements. He also noted that the increase in EU competences has not always been managed through the community method, providing as example the emergence of the Eurogroup. The rapporteur further insisted that in other areas, the community method has been weakened by a systematic resort to unanimity in the Council in areas where the ordinary legislative procedure and hence qualified majority vote apply, for instance in regulating migration. He concluded that the overall benefit of the community method lies in the fact that is efficient, simple and understandable to the citizens.

Members of the Committee who spoke welcomed the working document and have unanimously supported the rapporteur’s approach. They agreed that the subject of this report will be an important issue to be addressed at the upcoming Conference on the Future of Europe. Several highlighted the lessons learnt from the impact of COVID-19 and the need for the EU to increase its capacity to act in a number of areas, which further highlighted the relevance of the community method.

A number of Members who spoke pointed out that unanimity often leads to blockages and solutions adopted outside the EU legal framework, but also highlighted a number of areas in which Council voluntarily restricts itself to unanimity, even though qualified majority is the legal norm. Some Members referred to areas where community method might be losing its

²² The following Members took the floor during the debate: Vladimír Bilčík, Daniel Freund, Sandro Gozi, Danuta Maria Hübner, Guy Verhofstadt.

attractiveness due to the increasing prevalence of inter-governmental approaches, such as in the protection of the rule of law, the application of the Stability and Growth pact, migration policy, but also in the context of the current health emergency. Other Members highlighted the need to also point out the positive success narratives of the community method in some areas, and to identify policy areas which the use of the community method could be further expanded to. One Member also insisted in this regard on the need for more coherence and consistency between the positions between of political parties at the European and the national level.

In general, the Members who spoke were critical of the role of the European Council. They insisted that the exercise of its powers should remain within the letter and the spirit of its mandate enshrined in the Treaties. Some Members highlighted that in its *modus operandi*, the European Council often risks being exposed to the capture of its agenda by few Member States. Several Members, including the rapporteur, also pointed to a shift of power to informal structures, such as sherpas, who as agents acting on behalf of the Heads of State and Government, transform this institution into the ultimate clearing house for a number of detailed issues. They concluded that all these trends are detrimental to the proper functioning of the community method, and also to the European Council itself by undermining its institutional mandate.

Annex I : List of legal bases under intergovernmental decision-making versus supranational decision-making (ordinary legislative procedure)

A. Treaty on European Union and Treaty on the Functioning of the European Union – intergovernmental decision-making legal bases

Treaty on European Union – Intergovernmental Decision-making

Legal base	procedure
7(2) TEU – establishment of serious and persistent breach of EU values	EuCo unanimity
17(5) TEU – composition of the Commission	EuCo unanimity
22(1) TEU – identification of strategic interests	EuCo Unanimity, recommendation of the Council
24(1) TEU CFSP	Default unanimous decision by Council or EuCO, non-legislative
31(1) TEU CFSP – definition of strategic interests	Default action by unanimity Council or EuCO
31(3) TEU CFSP passerelle	Unanimity of the EuCO
41(2) TEU CFSP operating expenditure	Unanimity in Council
42(2) and 42(4) TEU progressive framing of the CSDP and missions	EuCo unanimity Council unanimity
48(6) TEU simplified revision	EuCo unanimity
48(7) TEU – general passerelle clause	EuCo unanimity, EP consent, MS ratification
49 TEU – accession	Unanimity / EP Consent
50 TEU – withdrawal	Special QMV + EP consent

Legal base	Procedure
Article 19 (1) TFEU – Anti-discrimination	Unanimity + Consent
Article 21 TFEU - Freedom of movement and residence	Unanimity + Consultation
Article 22 TFEU (1) and (2)- Exercise of right of vote in municipal elections, right to vote and stand as candidate in EP elections	Unanimity + Consultation
Article 23 TEU - Diplomatic and consular protection	Consultation
Article 25 TFEU - Extension of rights related to EU citizenship	Unanimity + Consent + MS ratification
64 (3) TFEU - measures against liberalisation of the movement of capital from / to third countries	Unanimity + Consultation

77(3) TFEU - provisions on passports, ID card to facilitate exercise of EU citizenship (Article 20(2) (a))	Unanimity + consultation
81(3) TFEU - family law with cross-border implications	Unanimity + consultation
83(2) TFEU - approximating of laws on criminal offences and sanctions	Unanimity + consultation
86(1) TFEU - establishment of EPPO	Unanimity + consent
87(3) TFEU - police cooperation	Unanimity + consent
89 TFEU - cooperation of competent authorities - operation in the territory of another MS	Unanimity + consultation
113 TFEU - harmonisation of legislation on turnover taxes	Unanimity + consultation
115 TFEU - approximation of laws affecting the internal market	Unanimity + consultation
118 TFEU language arrangements intellectual property rights	Unanimity + consultation
126 (14) TFEU amendments to EDP protocol	Unanimity + consultation
127(6) TFEU conferral of tasks on ECB	Unanimity + consultation
153(2) social policy – social security, protection of workers, collective rights, employment of 3 rd country nationals	Unanimity + consultation
182(4) TFEU research - specific programs	Unanimity + consultation of EP and EESC
192(2) TFEU environment – fiscal measures, land use and country planning, management of energy sources,	Unanimity + consultation EP / EESC/ CoR
194(3) energy – fiscal measures	Unanimity + consultation
203 TFEU rules and procedure for association of countries	Unanimity + consultation
218 (8) TFEU association agreement and agreements in fields covered by unanimity	Unanimity + EP consent
223(1) TFEU EP composition	Unanimity + consent + MS ratification
262 TFEU – jurisdiction on intellectual property rights	Unanimity /+ consultation / MS ratification
308 TFEU EIB Statute	Unanimity + consultation of EP and Commission
311 TFEU par 3 and 4 – Own resources – system + implementing measures	Unanimity + consultation + MS ratification Unanimity + consent
312(2) TFEU - MFF regulation	Unanimity + consent
329(1) TFEU Enhanced cooperation	Council QMV + consent
329(2) CFSP enhanced cooperation	Unanimity + Opinion of VP/HR, EP information
333 TFEU - Enhanced cooperation <i>passerelle</i>	Unanimity + consultation
349 TFEU - Measures with regard to	Unanimity + consultation

overseas territories	
352 TFEU – flexibility clause (residual legal basis)	Unanimity + consent

B. TEU/TFEU Legal bases for Ordinary Legislative Procedure

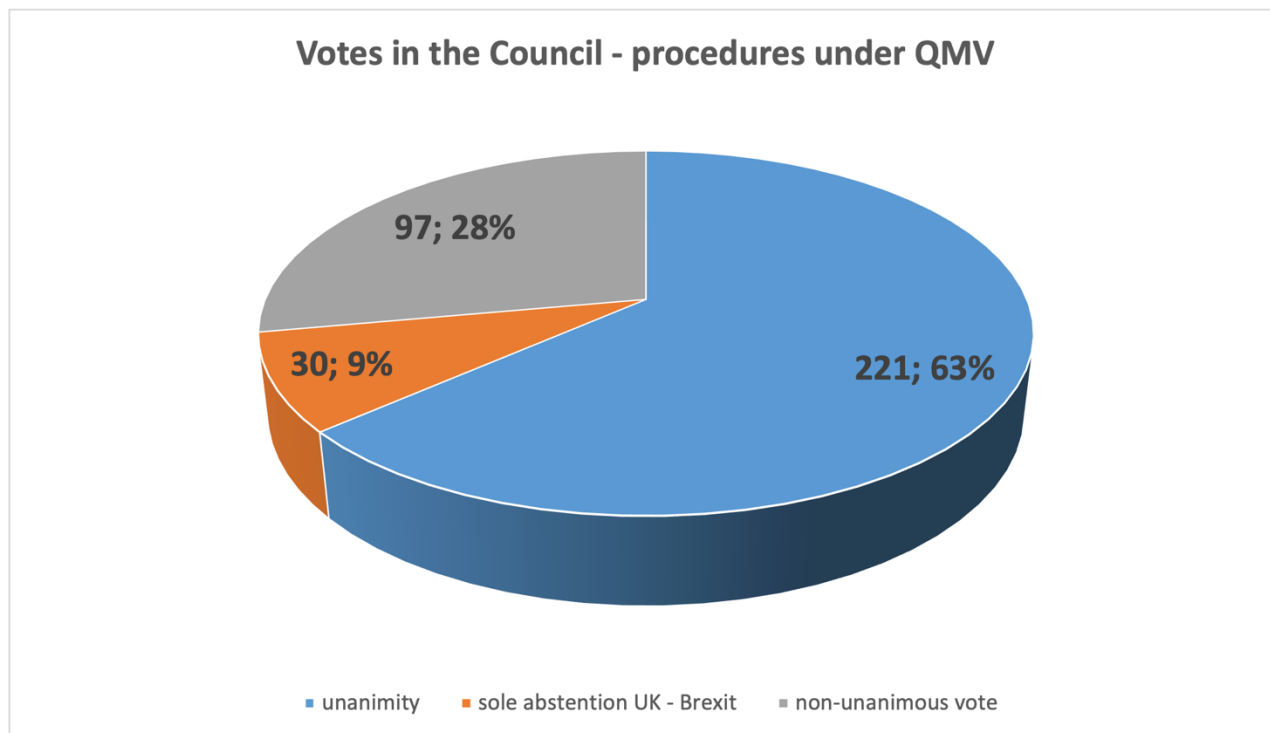
1. Services of general economic interest (Article 14 TFEU)
2. Procedures for the right of access to documents (Article 15(3), TFEU) (Article 255, paragraph 2)
3. Data protection (16(2) TFEU) (Article 286(2))
4. Measures to combat discrimination on grounds of nationality (Article 18 TFEU)
5. Basic principles for anti-discrimination incentive measures (Article 19(2) TFEU)
6. Measures to facilitate the exercise of the right of every citizen of the Union to move and reside freely in the territory of Member States (Article 21(2) TFEU)
7. Citizens' initiative (Article 24 TFEU)
8. Customs cooperation (Article 33 TFEU)
9. Application of competition rules to the common agricultural policy (Art. 42 TFEU, which refers to Article 43(2) TFEU)
10. Legislation concerning the common agricultural policy (Article 43(2), TFEU)
11. Free movement of workers (Article 46 TFEU)
12. Internal market – social security measures for Community migrant workers(1) (Article 48 TFEU) + safeguard clause
13. Right of establishment (Article 50(1), TFEU) + consultation of the EESC
14. Exclusion in a Member State of certain activities from the application of provisions on the right of establishment (Article 50(2) TFEU)
15. Coordination of the provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals with regard to the right of establishment (Article 52(2), TFEU)
16. Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons and the mutual recognition of qualifications (Article 53(1), TFEU)
17. Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union. (Article 56(2) TFEU)
18. Liberalisation of services in specific sectors (Article 59(1) TFEU)
19. Services (Article 62 TFEU)
20. Adoption of other measures on the movement of capital to and from third countries (Article 64(2) TFEU)
21. Administrative measures relating to capital movements in connection with preventing and combating crime and terrorism (Article 75 TFEU)
22. Visas, border checks, free movement of nationals of non-member countries, management of external frontiers, absence of controls at internal frontiers (Article 77(2), TFEU)
23. Asylum, temporary protection or subsidiary protection for nationals of third countries (Article 78(2) TFEU)
24. Immigration and combating trafficking in persons (Article 79(2) TFEU)
25. Incentive measures for the integration of nationals of third countries (Article 79(4))

TFEU)
26. Judicial cooperation in civil matters (excluding family law)(2) (Article 81(2), TFEU)
27. Judicial cooperation in criminal matters – procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments (Article 82(1)(2))
28. Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension (Article 83 (1)(2))
29. Measures to support crime prevention (Article 84 TFEU)
30. Eurojust (Article 85(1)2, TFEU)
31. Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities (Article 85(1)3 TFEU)
32. Police cooperation (certain aspects) (Article 87(2) TFEU)
33. Europol (Article 88(2)1 TFEU)
34. Procedures for scrutiny of Europol's activities by EP and national parliaments (Article 88(2)2 TFEU)
35. Implementation of the common transport policy (Article 91(1) TFEU)
36. Sea and air transport (Article 100(2) TFEU)
37. Measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market to promote the objectives of Article 26 (Article 114(1), TFEU)
38. Measures to eliminate distortions in the internal market (Article 116 TFEU)
39. Intellectual property except language arrangements for the European intellectual property rights (Article 118(1) TFEU)
40. Multilateral surveillance (Article 121(6) TFEU)
41. Modification of the Protocol on the Statutes of the ESCB and ECB (Article 129(3) TFEU)
42. Measures necessary for the use of the euro (Article 133 TFEU)
43. Incentive measures for employment (Article 149 TFEU)
44. Social policy (Article 153(1) except points (c), (d), (f) and (g), and 2(5), first, second and last subparagraphs, TFEU)
45. Social policy (equal opportunities, equal treatment and equal pay) (Article 157(3) TFEU)
46. European Social Fund (Article 164 TFEU)
47. Education (excluding recommendations) (Article 165(4)(a) TFEU)
48. Sport (Article 165(2) g and 4 TFEU)
49. Professional training (Article 166(4) TFEU)
50. Culture (excluding recommendations) (Article 167(5)1 TFEU)
51. Public health – measures to tackle common safety concerns in the health sphere(6) (Article 168(4) TFEU)
52. Public health – incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle tobacco and alcohol abuse (Article 168(5) TFEU))
53. Consumer protection (Article 169(3) TFEU)
54. Trans-European networks (Article 172 TFEU)
55. Industry (Article 173(3) TFEU)
56. Measures in the area of economic and social cohesion (Article 175(3))
57. Structural Funds (Article 177(1) TFEU)
58. Cohesion Fund (Article 177(2) TFEU)

59. European Regional Development Fund (Article 178 TFEU)
60. Framework Programme for Research (Article 182(1) TFEU)
61. Implementation of European research area (Article 182(5) TFEU)
62. Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results (Articles 183 and 188(2), TFEU)
63. Supplementary research programmes for some Member States (Articles 184 and 188, second paragraph, TFEU)
64. Participation in research programmes undertaken by several Member States (Articles 185 and 188(2) TFEU)
65. Space policy (Article 189 TFEU)
66. Environment (Community measures to achieve environmental objectives except measures of a fiscal nature) (Article 192(1) TFEU)
67. Environment Action Programme (Article 192(3) TFEU)
68. Energy, excluding measures of a fiscal nature (Article 194(2) TFEU)
69. Tourism - measures to complement the action of the Member States in the tourism sector (Article 195(2) TFEU)
70. Civil protection against natural and man-made disasters (Article 196(2) TFEU)
71. Administrative cooperation in implementing Union law by Member States (Article 197(2) TFEU)
72. Commercial policy - implementing measures (Article 207(2) TFEU)
73. Development cooperation (Article 209(1) TFEU)
74. Economic, financial and technical cooperation with third countries (Article 212(2) TFEU)
75. General framework for humanitarian operations (Article 214(3) TFEU)
76. European Voluntary Humanitarian Aid Corps (Article 214(5) TFEU)
77. Regulations governing political parties and their funding (Article 224 TFEU)
78. Creation of specialised courts (Article 257 TFEU)
79. Modification of Statute of Court of Justice, except Title I and Article 64 (Article 281 TFEU)
80. Procedures for monitoring the exercise of implementing powers (Article 291(3) TFEU): unanimity in the Council and simple consultation of Parliament)
81. European Administration (Article 298(2) TFEU)
82. Adoption of financial rules (Article 322(1) TFEU)
83. Fight against fraud affecting the Union's financial interests (Article 325(4) TFEU)
84. Staff Regulations of officials and Conditions of Employment of Other Servants of the Union (Article 336 TFEU)
85. Statistics (Article 338(1) TFEU)

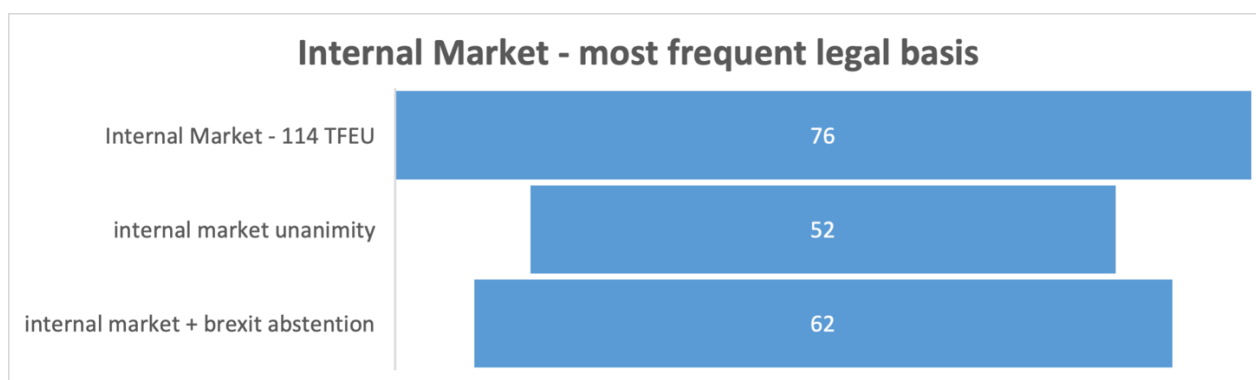
Annex II: Votes in the Council on procedures under the ordinary legislative procedure and QMV

Overall statistics of votes in the Council on procedures under QMV Juncker Commission's term of office 01/11/2014 - 30/11/2019



Source: AFCO Secretariat own elaboration on the basis of Council's voting records, OEIL and Eur-Lex database.

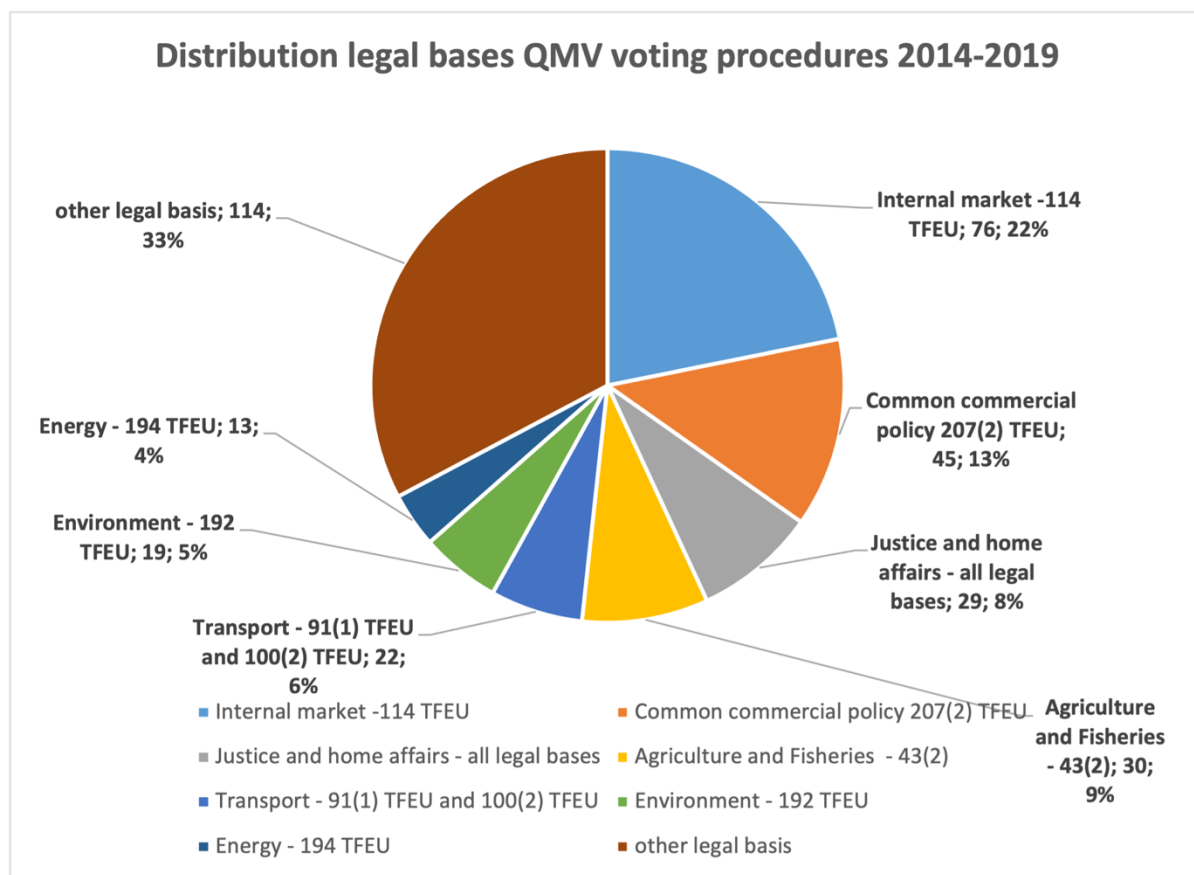
In total in 63 % of procedures where QMV was required, the Council voted unanimously to approve a legal act. If we discount the effects of Brexit (leading to UK abstention on a number of files), this figure reaches 72 % - almost three quarters of all legal acts subject to QMV were adopted by unanimous vote in the Council.



Source: AFCO Secretariat own elaboration on the basis of Council's voting records, OEIL and Eur-Lex database.

The internal market remains the dominant legal base in QMV procedures. Almost one quarter of all procedures in 2014-2019 were adopted under this legal base. It is to be noted that measures relating to economy and finance have been predominantly adopted under this

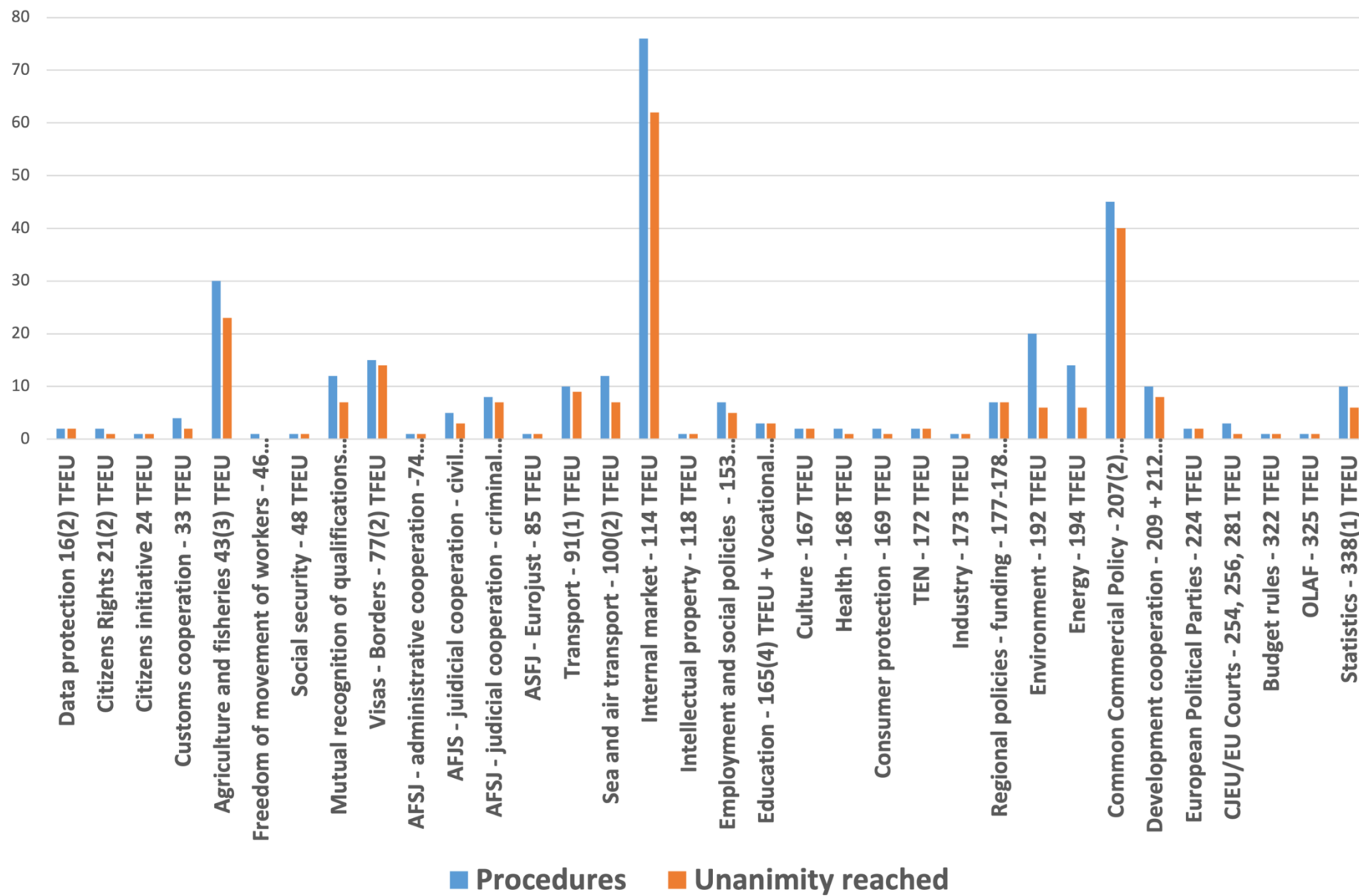
procedure. With a correction for Brexit, over 81 % of all votes subject to QMV under this legal basis were unanimous.



Source: AFCO Secretariat own elaboration on the basis of Council's voting records, OEIL and Eur-Lex database.

Besides the internal market, the most frequently used legal basis for acts adopted by the Council in 2014-2019 were: common commercial policy 13 %, agriculture and fisheries 9 %, justice and home affairs (all legal bases included), 8 % as well as transport 5 %, environment 5 % and energy.

Voting procedures under QMV/OLP in the Council 2014-2019



Finally, the table below lists the most frequent legal bases under which the acts were adopted by the Council in 2014-2019. In addition to the internal market, the fields in which unanimity has been the norm for a substantial number of acts adopted are: the common commercial policy, justice and home affairs (in particular with regard to visas, borders and migration policy (Article 77(2) of the TFEU), administrative and judicial cooperation in civil and justice matters in the area of freedom, security and justice, agriculture (AFSJ), fisheries, transport, and in a more limited number of cases, structural policies, culture and education.

However, the more contentious fields, where unanimity has not always been the norm are: citizens' rights (with the exception of the European Citizens' Initiative), mutual recognition of qualifications, judicial cooperation in civil matters, legislation on sea and air transport, health and statistics.

The most contentious fields where the Council was often well short of reaching unanimity are: the environment, energy, the statute and competences of the EU courts, and freedom of movement for workers.

	+90%	+70%	+50%	+30%	0%
Legal base	Procedures	Unanimity reached	% unanimity		
Data protection 16(2) TFEU	2	2	100		
Citizens' Rights 21(2) TFEU	2	1	50		
Citizens' initiative 24 TFEU	1	1	100		
Customs cooperation - 33 TFEU	4	2	50		
Agriculture and fisheries 43(3) TFEU	30	23	77		
Freedom of movement of workers - 46 TFEU	1	0	0		
Social security - 48 TFEU	1	1	100		
Mutual recognition of qualifications 53(1) TFEU	12	7	58		
Visas - Borders - 77(2) TFEU	15	14	93		
AFSJ - administrative cooperation - 74 TFEU	1	1	100		
AFJS - judicial cooperation - civil matters - 81(2) TFEU	5	3	60		
AFSJ - judicial cooperation - criminal matters - 82(1) and 82 (2) TFEU	8	7	88		
ASFJ - Eurojust - 85 TFEU	1	1	100		
Transport - 91(1) TFEU	10	9	90		
Sea and air transport - 100(2) TFEU	12	7	58		
Internal market - 114 TFEU	76	62	82		
Intellectual property - 118 TFEU	1	1	100		
Employment and social policies - 153 TFEU	7	5	71		

Education - 165(4) TFEU + Vocational training 164 (4) TFEU	3	3	100
Culture - 167 TFEU	2	2	100
Health - 168 TFEU	2	1	50
Consumer protection - 169 TFEU	2	1	50
TEN - 172 TFEU	2	2	100
Industry - 173 TFEU	1	1	100
Regional policies - funding - 177-178 TFEU	7	7	100
Environment - 192 TFEU	20	6	30
Energy - 194 TFEU	14	6	43
Common Commercial Policy - 207(2) TFEU	45	40	89
Development cooperation - 209 + 212 TFEU	10	8	80
European Political Parties - 224 TFEU	2	2	100
CJEU/EU Courts - 254, 256, 281 TFEU	3	1	33
Budget rules - 322 TFEU	1	1	100
OLAF - 325 TFEU	1	1	100
Statistics - 338(1) TFEU	10	6	60

Source: Drawn up by the AFCO Secretariat on the basis of Council's voting records, OEIL and the Eur-Lex database.