

Working Paper

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Consensus per video?

Decision-making in the Council of the EU during the Covid-19 pandemic

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¹ *Special thanks to Paul Bochtler for the collection of the data from the EU institutions. The full data set is available at Paul Bochtler/Nicolai von Ondarza (2021): Public Votes in the Council of the EU (2010-2021), <https://doi.org/10.7802/2344>. We also thank Arthur Buliz for visualising our findings.*

Introduction

The Covid-19 pandemic had a sweeping impact on working methods across Europe and the world. In March 2020, within a few weeks most EU countries went into a form of lockdown, heavily restricting travel and in-person meetings. With little preparation, businesses and political institutions including from the EU had to transition to video meetings. This transition was particularly challenging for the EU, whose institutions are based on constant exchange between representatives from different EU countries and EU institutions, and whose ability to find compromises relies not only on formal procedures, but also a host of informal meetings, exchanges and negotiations at the margins of EU meetings. At the same time, the pandemic required an urgent response at the national and European level, with many far-reaching decisions being taken in 2020/21 that have the potential to affect European integration in the long-term, such as the multiannual financial framework with the 'Next Generation EU' (NGEU) recovery fund, the support-program for short-time work measures (SURE), the joint vaccination procurement or the digital vaccination certificate.

This working paper will therefore take a closer look how the main intergovernmental institution of the EU, the Council of Ministers, adapted its working methods during the Covid-19 pandemic. What impact did the forced transition to video meetings have on their law-making and decision-making in 2020/21? To assess this, we analyse the quantity and type of meetings that took place in the Council in 2020/21 compared to previous years, compare the number of legal acts adopted and analyse the voting behaviour of EU member states in the public votes of the Council. The analysis shows that while the Council was able to conduct most of its work under the pandemic constraints, it adopted considerably fewer legal acts. Joint law-making with the European Parliament was particularly strongly affected. Within the Council, even via video member states were able to find consensus on most issues, but on the controversial topics a growing East-West split can be detected.

The shift to video meetings

The frequency and type of Council meetings shows how the pandemic has affected the work of the Council. Like the rest of the world, from March 2020 onwards, the Council had to switch its working methods and conduct digital meetings in line with the restrictions to fight against Covid. As for some months in 2020, digital meetings were the only possibility to conduct Council meetings, and other procedures had to be adjusted accordingly. For Council decisions to be legally binding, these decisions had to be followed up afterwards by means of a written procedure.² The changed technical circumstances also had an

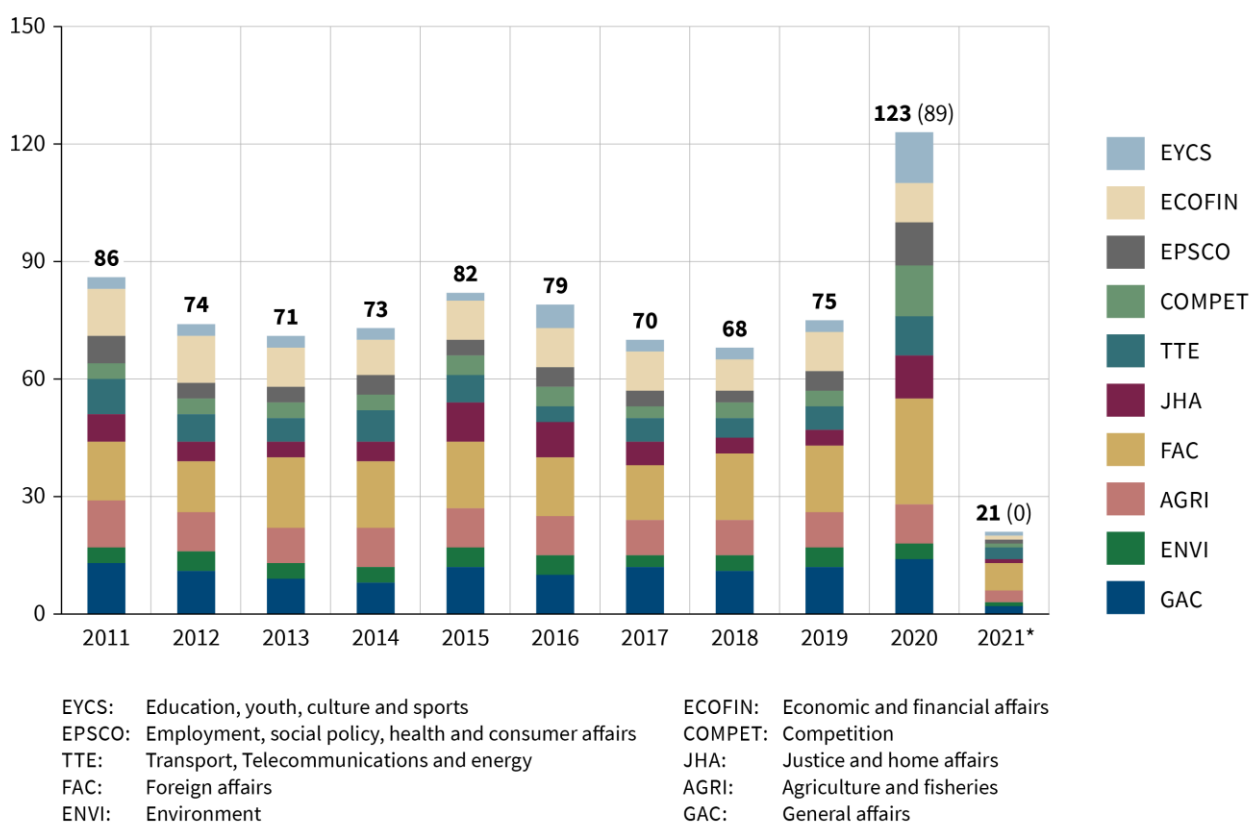
² Art.15 Council's Rules of Procedure (2009/937/EU). Unlike the European Parliament, the Council did not establish special procedures for remote voting but opted for using the written procedure on all votes. See

impact on the Council's working methods. Several scheduled Council meetings and Council working groups had been cancelled. Due to limited technical capacities to hold stable and secure video conferences the Council Presidency also had to prioritise some dossiers. According to information provided by the German Council Presidency, only 25 per cent of all Council meetings in the second half of 2020 took place physically.³

Looking at the number and type of meetings, after an initial phase, the frequency of (digital) Council meetings clearly rose. From 2011 to 2019, the different Council formations on average met 75 and never more than 86 times a year for formal meetings. In contrast, in 2020 the number of formal Council meetings rose to 123. As 89 of those meetings in 2020 were conducted digitally, there were more digital meetings in 2020 than regular meetings on average in the years before.

Council meetings per year since 2011

(Number of video conferences indicated in brackets)



Source: Own compilation based on the Council's official data.

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* January – June 2021

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Clear differences could be observed between the different Council formations. The Foreign Affairs Council traditionally meets most often, and in 2020 even surpasses the previous highest number of meetings since the Treaty of Lisbon (18 in 2013) by 50 per cent. This can be traced back to the high number of crises in the EU's neighbourhood last

Council Decision (EU) 2020/430 of 23 March 2020 on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the Covid-19 pandemic in the Union.

³ Germany's Presidency of the Council of the European Union in figures, available online at <https://www.bundesregierung.de/breg-en/news/presidency-eu-in-figures-18> (Last Access: 5.10.2021).

year. In addition, however, combined sessions with ministers of defence, development or trade that are usually held as one Foreign Affairs Council were split apart when conducted per video. Besides the Foreign Affairs Council, the Council formations on Education, Youth, Culture and Sports (EYCS), Employment, Social Policy, Health and Consumer Affairs (EPSCO), Competition (COMPET), Transport, Telecommunications and Energy (TTE) as well as Justice and Home Affairs (JHA) met, in part significantly, more often than before. The European Council also resorted to digital meetings throughout the first months of the pandemic, whereas from July 2020 onwards, the heads of state and government met in person again with video meetings taking place in between. After the pandemic intensified again during winter and spring 2021, the European Council held its first physical meeting of 2021 only in May. Noticeably, the far-reaching decisions of the European Council such as on the MFF and NGEU were all taken during in-person meetings.

The pandemic also changed the way of negotiations and decision-making during Council meetings. Even in normal times, the preparatory working groups and the Committee of Permanent Representatives (Coreper) are of central importance to prepare Council decisions. During Council meetings, normally only the most politically critical issues are negotiated by the ministers.⁴ As there was no possibility for informal or side-negotiations during digital meetings, often only prepared statements were read out. Accordingly, the preparatory work conducted by Coreper which met physically throughout 2020 and 2021 became even more important during the pandemic.⁵

Looking at the frequency and type of formal Council meetings in 2021, a shift to the Council's pre-pandemic working mode can be observed. Formal meetings were only conducted physically, however a number of informal digital meetings took place. Here, informal digital meetings exceed physical informal meetings in number. The number of informal meetings conducted physically corresponds to those in 2020, except for the General Affairs Council, which did not meet informally in 2020, and the TTE Council, which met physically for more informal meetings in 2020 than it did in 2021 so far.

Looking ahead, the circumstances in 2020 potentially set the way for the use of digital (informal) meetings as additional preparatory and ad-hoc meeting opportunities. For instance, in the first half of 2021, the Foreign Affairs Council continued using video meetings, with six in total. These included ad-hoc discussion on current developments regarding Ukraine and Russia, Israel, and Afghanistan by foreign ministers as well as exchanges of views on mid- and long-term topics such as trade policy, migration and development by trade or development ministers. Even if these video meetings do not allow for binding decision-making, the advantages they provide for the more spontaneous and ad-hoc setting up of meetings, makes them likely to be employed in addition to physical meetings in the future

Less law making, more coordination

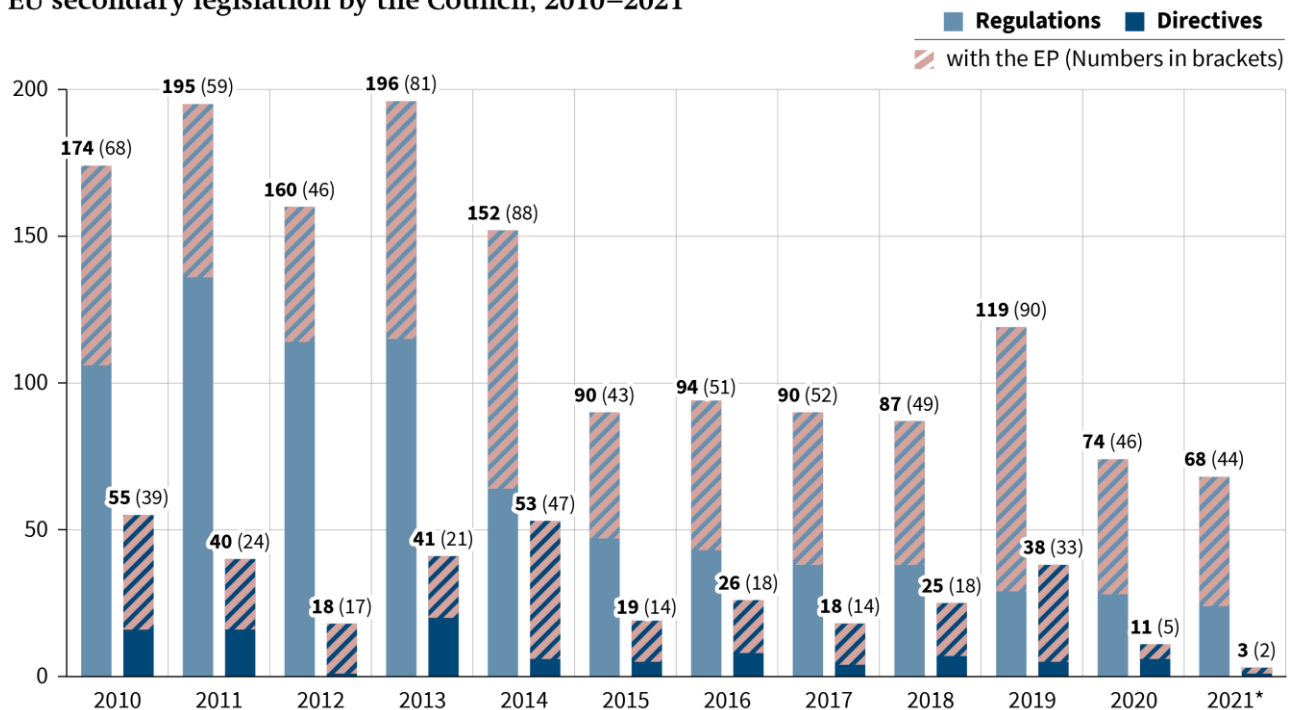
But even if the Council was able to keep up or even increase its meeting frequency, this does not mean that it was as productive as before. Here, one metric is the number of secondary legislations adopted by the Council per year. The quantity of secondary legislation adopted in the Council normally follows the EP's legislative cycle. In the end of a legislative term (like in 2018 and the first half of 2019) more legislative acts are adopted via the co-decision procedure, whereas at the beginning of each term, more time is needed

⁴ Fiona Hayes-Renshaw, »The Council of Ministers«, in: John Peterson/Michael Shackleton (Eds.): *The Institutions of the European Union*, Oxford 2012, pp. 68-95.

⁵ Jacopo Barigazzi, »How ambassadors took over the EU«, in: *Politico*, 24.6.2021.

for negotiations, which is why less acts are adopted then. The first full year of each legislative term is normally the period of time to conclude the first big legislative initiatives by the Commission. In 2020 the number of directives and regulations adopted by the Council was 85, which is significantly less than the 157 acts adopted in the previous year. Therefore, the pattern caused by the legislative cycle remained, but the total number of adopted regulations and directives decreased even more. In general, the quantity of EU-legislation decreased continuously since the entry into force of the Lisbon Treaty and throughout the different crises in the past decade.⁶

EU secondary legislation by the Council, 2010–2021



Source: Own compilation based on data by EUR-Lex.

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Within the legislative term from 2014 to 2019, there were already fewer legislative acts adopted than in the previous term from 2009 to 2014. In 2020, this trend increased as only a total of 85 regulations and directives were adopted in comparison to 109 in 2015. The smaller number of adopted acts can also be traced back to the pandemic, as emergency measures such as SURE were adopted rapidly, but many long-term acts had to be postponed. Within the first half of 2021, 71 regulations and directives were adopted indicating a slight shift back to the pre-pandemic quantity of secondary legislation.

Approaching the middle part of the EP's and the Commission's term, roughly 25 per cent of the announced legislative proposals by the Commission have been adopted so far, with another 25 per cent submitted but not yet being adopted. Within the coming months it will be crucial for the Commission that the law-making process reverts back to normal as it seeks to deliver on its commitments.⁷

⁶ See Nicolai von Ondarza, »Rat der EU«, in: Werner Weidenfeld/Wolfgang Wessels (Hrsg.): Jahrbuch der Europäischen Integration, 2020, pp. 99-107.

⁷ Étienne Bassot, »The six policy priorities of the von der Leyen Commission. State of play in autumn 2021«, European Parliamentary Research Service In-Depth Analysis, 2021.

In 2020, the percentage of regulations and directives adopted by the Council together with the EP dropped significantly. Whereas in 2019 75 per cent of all regulations and more than 85 per cent of all directives were adopted together with the EP, in 2020 these numbers fell to 62 and 45 per cent, respectively. This illustrates how the EP lost influence in legislation through the pandemic raising questions for the EU's democratic legitimacy.⁸ The number of adopted regulations and directives in the first half of 2021 already comes close to the number of those adopted in previous year, the number of adopted directives however remains very small. This does not only indicate a slight improvement of the pandemic situation but also reflects the dynamics of the more advanced EP's legislative term. The percentage of acts adopted with the EP increased slightly but did not yet reach its pre-pandemic level which might be due to the fact that negotiations between the Council and the EP have yet to restart.

Less trilogues, less first reading agreements

The most noticeable effect of the pandemic was therefore visible in the low number of legislation adopted together with the European Parliament. Usually, the majority of legislative acts in the EU is adopted together by the Council and the EP following the Ordinary Legislative Procedure. Since the entry into force of the Lisbon Treaty, two developments in the cooperation of the Council and the EP became increasingly visible. The percentage of legislative acts adopted via the Ordinary Legislative Procedure (also called co-decision procedure) in contrast to secondary acts adopted by the Council alone or where the EP was only consulted rose significantly. At the same time, the EP, the Council, and the Commission almost exclusively used the informal trilogue procedure to reach agreements. After a legislative initiative by the Commission, the three institutions directly enter into informal trilogue negotiations to find a compromise which is then adopted by the EP and the Council in the first reading. The procedure proved to be very effective but is criticised as being insufficiently transparent.⁹

Changes in the number of adopted legislative acts and the share of agreements in first reading can not only be traced back to the pandemic but also to the dynamics of the EP's legislative cycle over the years. In 2019, right before the European elections, 78.3 per cent of legislative acts were adopted by the Council and the EP in co-decision – the highest percentage since the Lisbon Treaty's entry into force. A different picture could be observed in 2020 when the percentage of legislative acts adopted by the Council and the EP declined to "only" 60 per cent. The smaller share is partially caused by the beginning of the legislative term as the negotiations between the Council and the newly constituted EP have to get underway, whereas acts adopted exclusively by the Council progress unaffected by the EP's legislative term.

In addition, however, the Covid-pandemic posed logistical difficulties for the cooperation of the Council and the EP. In consequence, dossiers that required the co-decision of the Council and the European Parliament did not proceed as quickly as those where the treaty allowed a decision by the Council alone. In consequence, fewer acts under co-decision were adopted. In addition, the EU institutions also made frequent use of emergency clauses provided by the EU treaties such as Art. 122 TFEU. This allowed the

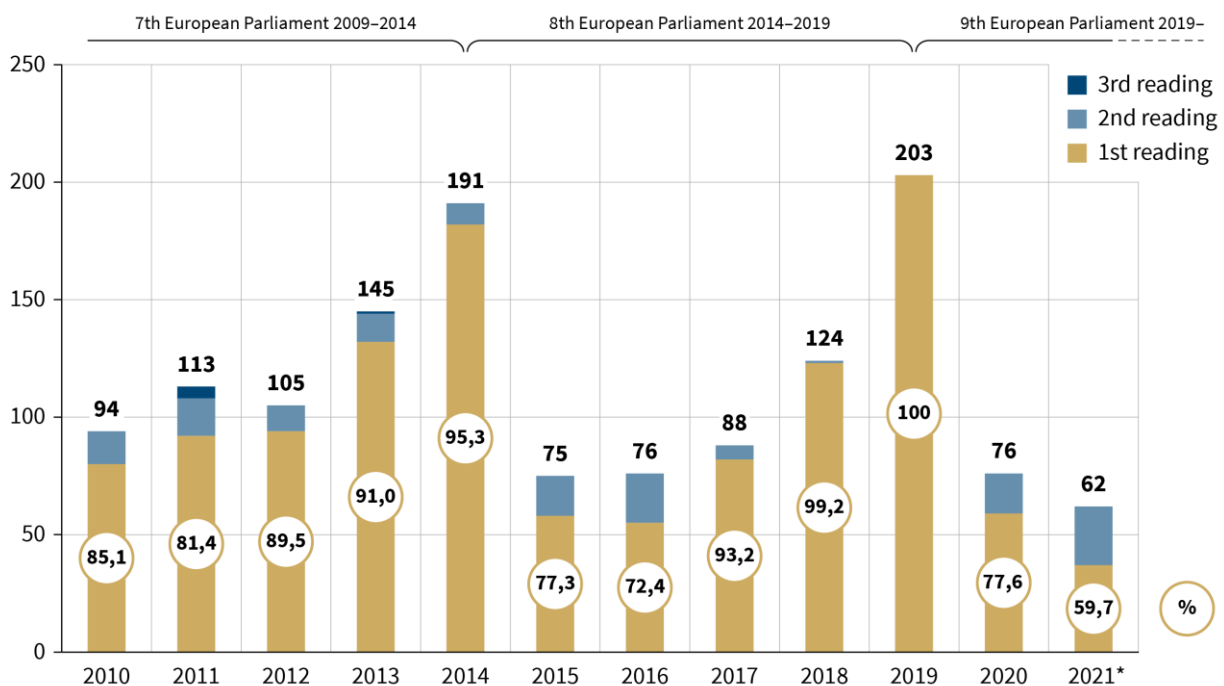
⁸ Nicolai von Ondarza, »The European Parliament's Involvement in the EU Response to the Corona Pandemic. A Spectator in Times of Crisis«, Berlin: Stiftung Wissenschaft und Politik, October 2020 (SWP Comment 45/2020).

⁹ Christine Reh, »Is informal politics undemocratic? Trilogues, early agreements and the selection model of representation«, in: Journal of European Public Policy, 21 (2014) 6, pp. 822–841.

swift adoption of measures such as the short-time work scheme SURE or the joint vaccination procurement, but also bypassed the European Parliament. It is therefore rather remarkable that the percentage of legislation adopted in co-decision nevertheless remained at 60 per cent in 2020, which is higher than in the first full year of the last legislative term (52.3 per cent in 2015).

Effects caused by the pandemic as well as the legislative cycle were even more striking in the number of agreements in first reading via the trilogue procedure. Whereas at the end of the last legislative term the share of agreements in first reading rose to 99 per cent in 2018 and even to 100 per cent in 2019 (see chart), in 2020 less than 80 per cent of legislative acts were agreed on in the first reading.¹⁰ This is the lowest share since 2016. Although this may partially be explained by the Council having to find common ground with a new, more fragmented EP, the major challenge was the limited number of trilogue meetings that could be organised in 2020/21.

Agreements in the Ordinary Legislative Procedure since 2010



Source: Own compilation based on official data by the European Parliament.

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The changed patterns observed in the co-decision procedure in 2020 so far seem to perpetuate in part in 2021 as well – in line with the ongoing pandemic. The number of legislative acts adopted in co-decision will presumably increase again and will therefore be significantly higher than in 2020. In the first half of 2021 the share of agreements in first reading fell to 59.7 per cent, the lowest share since the Lisbon Treaty entered into force. This shows that even after the MFF was adopted, organising trilogues continues to be more difficult under the limitations of the pandemic. It however remains to be seen how the share changes with the months to come, as the pandemic slowed down after the

¹⁰ Source: Statistics on the legislative votes in the European Parliament Plenary, available online: <https://www.europarl.europa.eu/plenary/en/bilan-statistic.html> (Last access: 29.10.2021).

first months of 2021 and vaccine rates increased, allowing for more physical trilogue negotiations.

Consensus culture retained

One major question when the Council switched to video conferences was whether ministers could retain the 'consensus culture' that has developed between EU national governments even through the most controversial times.¹¹ In this vein, most decisions in the Council are adopted by consensus, even when qualitative majority voting is possible. In consequence, in the public votes of the Council in the years between 2010 and 2019, on average 60.6 per cent of decisions under the QMV procedure were nevertheless adopted in unanimity, and a further 20.1 per cent with only abstentions, leading to more than 80 per cent of decisions taken by consensus (i.e. without no votes).¹² The high point was in 2016, when 64 per cent of decisions in the QMV procedure were taken by unanimity, and 90.5 per cent by consensus.

This consensus culture is on the one hand due to an enlightened self-interest from the member states, who all know that they may find themselves eventually in a minority, and it is therefore in their interest to find compromises that all member states can live with as far as possible. The threat of outvoting member states via qualified majority also often works to nudge member states towards accepting a compromise, whereas in decisions under the unanimity rule, individual member states may wield their veto until their demands are met. Decisions taken by qualified majority against the explicit core national interest of member states therefore remain the absolute exception. The controversial decision in 2015 to adopt a refugee relocation scheme against the will of four member states¹³ even turned out to be an exception proving the point of this informal agreement, as the EU was never able to force the member states to implement this legally binding decision, and refugee relocation has remained a very divisive issue ever since.

On the other hand, the consensus culture is also based on the many informal negotiations surrounding decision-making in the Council, ranging from the Council working groups over Coreper to informal talks between ministers on the most politically sensitive issues, which allow the development of compromises in an atmosphere of trust. It is exactly those many informal talks which are not possible in video meetings, where ministers cannot easily meet in smaller groups nor trust who is 'in the room' in confidential talks. In many cases, Council sessions were therefore characterised by ministers reading prepared statements to each other. There was therefore an apprehension on whether the consensus culture could be retained in video meetings.

Looking at the public votes, there may have been fewer legislative decisions in the Council in 2020/21, but the 'compromise machinery' kept the consensus culture alive. Overall, in the 63 public votes in 2020 and 48 in the first half of 2021, 68 per cent (2020) and 77 per cent (2021) were taken by unanimity. This is the highest quota of QMV decisions adopted by unanimity since votes in the Council were first made public in 2009.

¹¹ See Dorothee Heisenberg, »The Institution of 'Consensus' in the European Union: Formal versus Informal Decision-Making in the Council«, in: *European Journal of Political Research*, 44 (2005) 1, pp. 65– 90; Daniel Finke, »Underneath the culture of consensus: Transparency, credible commitments and voting in the Council of Ministers«, in: *European Union Politics*, 18 (2017) 3, pp. 339– 361.

¹² Own calculation based on the public votes available by the Council. Not all votes in the Council are made public.

¹³ These were Slovakia, Hungary, Romania, and the Czech Republic, while Finland abstained. Although it originally reluctantly voted in favour of the decision, Poland joined the number of countries and strongly rejected any mandatory refugee relocation quotas two months later due to a change in government.

If you add the votes taken with only abstentions, in the first half of 2021 the Council reached the second highest degree of consensus ever at 89.6 per cent, despite mostly working via video. This shows that with a combination of ministers who often already knew each other well enough to conduct confidential negotiations via video, a functioning Coreper with physical meetings throughout the pandemic and Council Presidencies from Croatia, Germany, and Portugal, who were able to prepare decisions well and conduct the necessary side negotiations in smaller groupings, the Council was able to preserve its consensus culture also via video.

Table 1: Public votes in the Council before and during the pandemic

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021* | Sum |
|--------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------|
| Total QMV | 92 | 107 | 87 | 127 | 155 | 83 | 74 | 83 | 90 | 125 | 63 | 48 | 1134 |
| Unanimous | 70 | 75 | 61 | 83 | 115 | 60 | 54 | 59 | 60 | 72 | 49 | 40 | 798 |
| Consensus | 77 | 86 | 69 | 94 | 122 | 67 | 67 | 73 | 69 | 106 | 52 | 43 | 925 |
| No votes | 15 | 21 | 18 | 33 | 33 | 16 | 7 | 10 | 21 | 19 | 11 | 5 | 209 |
| 1 no vote | 11 | 10 | 9 | 20 | 21 | 9 | 4 | 6 | 10 | 10 | 6 | 2 | 118 |
| 2 or more no votes | 4 | 11 | 9 | 13 | 12 | 7 | 3 | 4 | 11 | 9 | 5 | 3 | 91 |
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | Average |
| Consensus in % | 83,7% | 80,4% | 79,3% | 74,0% | 78,7% | 80,7% | 90,5% | 88,0% | 76,7% | 84,8% | 82,5% | 89,6% | 81,6% |
| No Votes in % | 16,3% | 19,6% | 20,7% | 26,0% | 21,3% | 19,3% | 9,5% | 12,0% | 23,3% | 15,2% | 17,5% | 10,4% | 18,4% |
| 1 no vote | 12,0% | 9,3% | 10,3% | 15,7% | 13,5% | 10,8% | 5,4% | 7,2% | 11,1% | 8,0% | 9,5% | 4,2% | 10,4% |
| 2 or more no votes | 4,3% | 10,3% | 10,3% | 10,2% | 7,7% | 8,4% | 4,1% | 4,8% | 12,2% | 7,2% | 7,9% | 6,3% | 8,0% |

Source: Own calculation based on the publically available voting records of the Council of the EU. *January – June 2021

On the other side, there were also very few public Council votes where a larger number of member states were outvoted in 2020/2021. In 2020, in only five votes more than one member states was on the losing side. However, two of these votes were amongst the most extreme cases since 2010, in the sense that a big group of nine Central and Eastern member states were outvoted together. Both cases concerned a legislative file for regulated HGV traffic, against which even nine states together could not muster a blocking minority.¹⁴ Although this might have been a political anomaly that has little to do with conducting the decision-making procedure via video, it is still amongst the highest number of member states jointly outvoted in any public vote since they were first published in 2009.

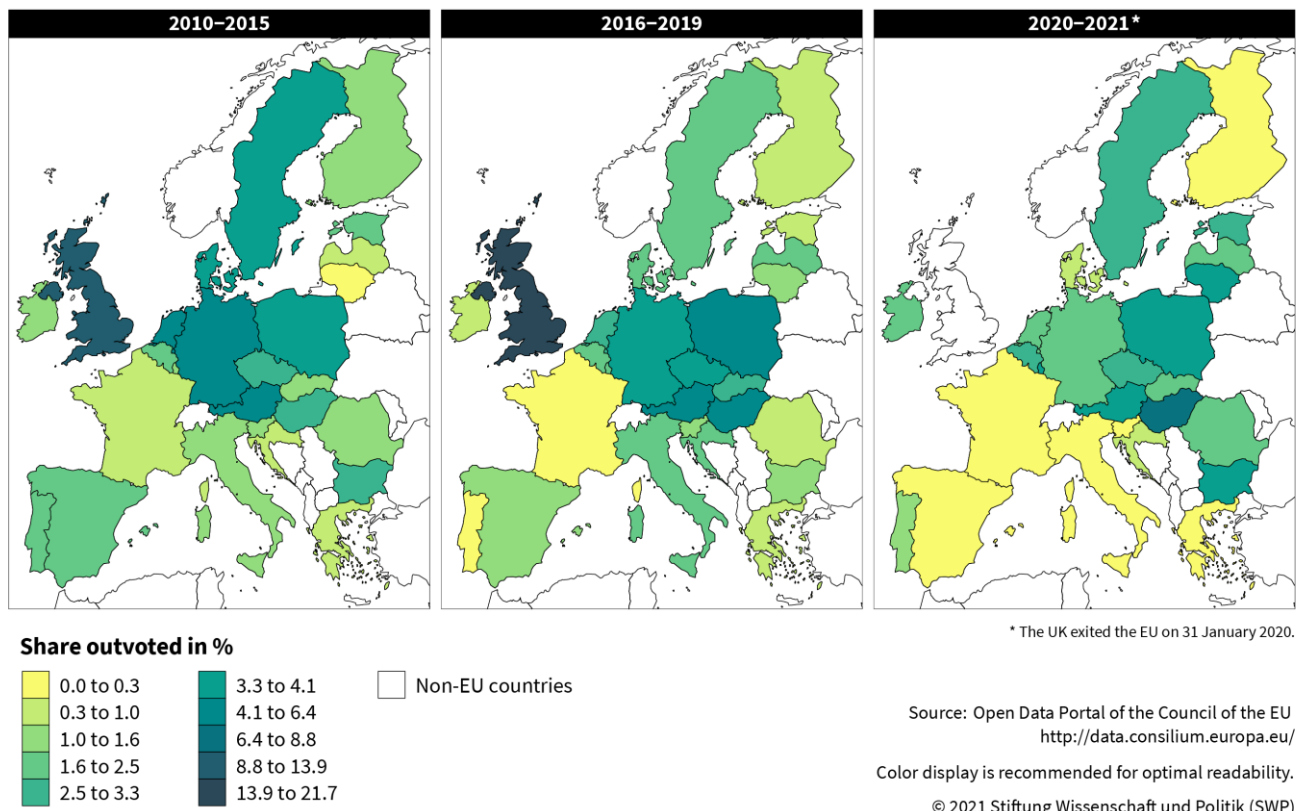
¹⁴ The outvoted member states were Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Latvia, Malta, and Poland – all countries that joined the EU in 2004/2007. See the public vote on the Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 from 7 April 2020.

But a growing East-West division

The high degree of overall consensus does mask, however, a remarkable shift in the pattern which member states are being outvoted most often. Historically, ever since the publication of votes the United Kingdom has been by far the EU member state most often outvoted in the Council. In some years, this amounted to almost a third of all no votes in the Council coming from the UK (2014: 29.4% of all no votes). By the end of the Brexit process, the UK also regularly abstained, leading to 43.9 per cent of all abstaining votes in 2019 coming from London. Although the UK still approved of the majority of Council decisions, this impression of being in a structural minority contributed to the Brexit movement within the Conservative Party.

Disagreements in public voting in the Council of the EU

Share of abstentions and no-votes of EU member states in public votes they participated in



Although not because of the pandemic, 2020/21 here also marked a significant shift. For one, the UK of course formally left the EU and all its institutions in January 2020. For another, the patterns of which member states are being more often outvoted shifted significantly. Before 2020, except from the UK, the number of times other member states either voted no or abstained was fairly evenly divided. As shown, in 2020/21 in the majority of cases decisions were taken by consensus, so that the 27 agreed on most issues. However, amongst the outvoted countries, a worrying pattern is emerging. In 2020, there were only four member states who were outvoted five or four times – Poland, Hungary, Bulgaria, and Cyprus. The member states who were three times on the losing side were Estonia, Latvia, Lithuania, Malta, and Romania. All of these are countries which joined the EU in 2004 or later, while no ‘old’ member state was among them.

This emerging East-West divide is particularly noteworthy in the case of Poland and Hungary. Their respective governments have become continuously more sceptical of European integration in recent years. In 2021, Hungary's ruling party Fidesz left the European People's Party and Poland's ruling PiS party has become the dominant force in the EU-sceptical European Conservative And Reformist (ECR) party since the UK left the EU. Both countries' governments are currently in confrontation with the EU over the rule of law, and have questioned the binding force of majority voting in the Council on refugee relocation; both also reject the further extension of QMV voting in the Council. And looking at the voting patterns in the public votes, it is not hard to see why – in 2020, the two countries alone accounted for 25 per cent of the no votes in the Council, in the first half of 2021 that even reached more than 50 per cent (though on a small number of public votes).¹⁵ This has been a fairly recent development. Until 2016, their share did not exceed 10 per cent, but has markedly risen with the PiS electoral victory in 2015 and the hardening of Orbán's Eurosceptic stance. In 2021, Hungary reached a level of disagreement with Council decisions that was hitherto only seen with the UK. Even though a 'Polexit' or 'Hungexit' might not be on the immediate agenda, the case of the UK can show how being in a continuous structural minority can feed EU-scepticism in government and ruling party.

Finally, it is worth taking a look at how the three largest remaining member states voted in 2020/21. Here, different patterns are at play. In contrast to the UK, since votes were first made public in the Council France has been the country least often outvoted. In total, France has only been outvoted once and abstained twice in all public votes since 2010, less than half of Hungary in the first six month of 2021. This continued in 2020/21, with France managing to be on the winning side in all public votes.

Italy is another country that is rarely outvoted in the Council, with a total of ten no votes and six abstentions since 2010, with four of the ten no votes coming from the Cinque Stelle/Lega coalition in 2018/19. In 2020/21, when the coalition behind Giuseppe Conte changed and later Mario Draghi took over the Italian government, it returned to being part of the majority in every single vote.

Germany, despite being the largest member, is more often in a minority. Since 2010, it has found itself being outvoted 57 times, with 27 no votes and 30 abstentions. Especially the abstentions can often be explained as the 'German vote', where coalition parties in Berlin cannot agree a common position resulting in an abstention and, in contrast to France or Italy, inability to trade into a compromise. In some years, Germany was therefore the second most outvoted country behind the UK. Not so in 2020/21 – in a combination of holding the Council Presidency in the second half of 2020 and being more closely aligned with the rest of the EU, Germany abstained only a single time in the first half of 2020, before its presidency, and was always part of the majority in the rest of the period studied. In total, France, Germany and Italy therefore accounted for only a single abstention in the public votes studied during the pandemic, highlighting their better cooperation and the return to forming more of a core of the Union.

Outlook

The analysis shows that even though the pandemic had a decisive impact on the Council's working methods and changed not only the quantity and type of decision-making in the Council and between the Council and the EP, far-reaching decisions were made advancing European integration. Although the pandemic is not yet over, developments in 2021

¹⁵ Own calculation based on the public voting records provided by the Council of the EU.

reveal that changes triggered by the pandemic are likely to persist and shape the Council's working mode in the future.

The shift to digital Council meetings brought with it a higher quantity of meetings and when the pandemic situation improved, in contrast to pre-pandemic times, digital meetings were still used to meet informally. The possibility to convene emergency discussions or otherwise hold digital meetings to quickly tackle an issue should be kept as an option even after the end of all pandemic restrictions. The fact that, as in the business world, physical meetings remain indispensable, is reflected by the pandemic's effects on the adoption of secondary legislation by the Council and the EP and the agreements between the Council, the Commission, and the EP within the triad procedure. These interinstitutional negotiations draw on extensive informal meetings and exchanges to find compromises which hardly can be replaced by video conferences as the pandemic has shown. However, the pandemic has also demonstrated that video meetings are possible and can be useful. For this, the Council should adapt its rules of procedure to agree the circumstances and limits for future video meetings.

The pandemic not only reduced the total number of secondary legislation adopted, but also significantly impacted the share of legislation adopted by the Council in co-decision with the EP. Combined with the use of emergency clauses in the EU treaties which enabled agreements without the EP's consent on certain measures, this depicts the EP's loss of power and influence on law-making during the pandemic. Although the quantity of adopted acts and the share of those adopted in co-decision in 2021 suggest an incremental return to pre-pandemic law-making, the share of agreements in first reading remains very small in the first half of 2021. It remains to be seen whether the interinstitutional negotiations will get back to their normal mode within the coming months.

Finally, despite the pandemic, the Council was able to maintain its consensus culture which was presumably not only based on the familiarity of ministers but also the in-person preparation of Council meetings by Coreper which became even more important during the pandemic. Nevertheless, the analysis indicates an alarming tendency in the voting patterns of Eastern and West European member states, as especially Hungary and Poland account for a great share of no votes in the Council, recently increasing to 50 per cent in 2021. Even though consensus in the EU is generally high, the danger of structural differences between East and West reflected in these voting patterns alludes to a larger challenge for the EU. If sustained, these East-West divisions could seriously weaken the legitimacy of the EU in these countries if they are regularly being outvoted.

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