

Malta's constitutional neutrality

Our veto in the EU's foreign and security policy remains intact, yet Malta's room for manoeuvre is narrowing, says Robert Musumeci

2 March 2026 | Robert Musumeci |



If Hungary's Viktor Orbán were to leave office the political climate surrounding the EU's unanimity in foreign and security policy could alter quickly. File photo: AFP

Malta's constitutional neutrality was politically negotiated in 1986 and enacted in 1987 as part of a wider package of constitutional reforms. Today, that domestic constitutional choice has become increasingly significant in the context of the European Union's evolving external posture, which has placed growing emphasis on speed, coordination and a more uniform foreign-policy response. As Kaja Kallas put it very recently: "Europe needs to adapt to the new realities."

Notwithstanding this, a substantial share of decision-making within the Common Foreign and Security Policy (CFSP) will continue to depend on unanimity. Unanimity ensures that a member state is not bound to a CFSP decision unless it has consented to it at the decisive stage.

To make it clear, unanimity isn't a guarantee that the decision matches the constitution of a member state – it's a stop button which the member state can press before the EU commits to the decision. We need not go too far. According to a December 2025 Euronews report, Hungary exercised its veto 19 times between 2011 and 2025, more than any other member state.

Nevertheless, a more immediate possibility now presents itself. If Viktor Orbán were to leave office and be replaced by the opposition Tisza Party, which is leading in the polls, on a programme of restoring EU ties and unlocking suspended EU funding, the political climate surrounding unanimity could alter quickly. True, the rule of unanimity would remain untouched in EU law but the appetite to wield it as a blunt instrument would likely diminish.

A potential new Hungarian government seeking to normalise relations with Brussels would be expected to avoid headline vetoes, and, with that, the informal ‘cover’ created by repeated past Hungarian obstruction would begin to disappear for other member states that have relied on unanimity to protect domestic constitutional commitments.

With this new reality, the prospects for expanding qualified majority voting (QMV) in selected CFSP fields may reopen via the CFSP passerelle in Article 31(3) TEU: the European Council may unanimously adopt a decision stipulating that the Council shall act by QMV in specified CFSP cases (while decisions with military or defence implications remain excluded). But that same unanimity requirement means the real veto-point is upstream: any single member state can still block passerelle activation.

“

*Malta faces a demanding
set of choices*

- Robert Musumeci

”

The sharper question, therefore, is whether constitutionally neutral or politically cautious states, Malta being the obvious example, would be willing to bear the political cost of halting the shift once a habitual holdout is no longer in play. Legally, the position is clear: the CFSP passerelle requires unanimity in the European Council, so Malta can block its activation where necessary to safeguard its neutrality.

Yet, the deeper issue is whether Malta can do so without paying a higher political price. At this juncture, Malta faces a demanding set of choices. One option is to ‘recalibrate’ constitutional neutrality so that deeper alignment with collective EU foreign policy is permitted within clearly defined limits. Even so, it remains difficult to envisage a two-thirds majority in Malta’s parliament entertaining such a motion.

That political inertia is precisely why the intervention of Mario de Marco deserves note: he openly said in parliament that Malta should, at the very least, reopen the question whether the neutrality clause introduced in 1987 remains fit for present strategic conditions. Yet, the force of his argument does not dissolve the arithmetic of constitutional entrenchment.

Another option is constructive abstention under Article 31(1) TEU, which allows a member state to opt out of a CFSP decision by formal declaration without blocking it. In that scenario the state is not bound to apply the decision but agrees not to obstruct its implementation and accepts that it commits the Union.

Prima facie, such a pathway may prove to be legally sound but a formal abstention could spotlight Malta's divergence just as the EU pushes for greater unity, and it may reduce Malta's informal influence, since abstainers tend to be seen as policy-takers rather than policy-shapers. For sure, that choice is not easy.

Robert Musumeci holds a Ph.D. in law and is a senior lecturer in public law.