L E G A L O P I N I O N

on the majority requirements in the Council of the European Union for the vote on CETA

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A. Questions for the legal opinion

The organisation Mehr Demokratie e.V., which is at the helm of a consortium of other civil society organisations, has posed the following questions in this opinion.

> "What are the majority requirements for the entire ratification process with regard to CETA? Is unanimity a mandatory requirement or could the agreement also be adopted by a qualified majority vote?
>
> a. How will the qualification of CETA as a mixed agreement or as an exclusive EU agreement impact the majority requirements for the various votings.
>
> b. In this regard, what impact will the EU Commission's statement that, although they are treating CETA as a mixed agreement, they take the legal position that CETA is an EU-only agreement, have?
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> Specifically
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> aa. Required majority for the decision of the Council of the European Union on the signing of CETA.
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> bb. Required majority for the decision of the Council of the European Union on the conclusion of CETA.
>
> cc. Required majority for the decision of the Council of the European Union on the provisional application of CETA."

In view of the legal uncertainties in the institutions of the states and the Union, there is every reason to answer these questions of the legal opinion. Indeed, there are different responses to the question as to what majorities must be achieved in the Council of the European Union for the decisions on CETA to be adopted effectively. For instance the official website of the Council states that mixed agreements can only be concluded by a unanimous Council decision.[1] With regard to CETA, the German government has repeatedly stated that decisions of the Council on the signing and the provisional application can only be made unanimously[2]. An expert report from the Research Service of the German

[1] http://www.consilium.europa.eu/de/council-eu/international-agreements/

[2] Response from State Secretary Machnig (BMWI) on the parliamentary question from MP Klaus Ernst (DIE LINKE), http://dip21.bundestag.de/dip21/btd/18/092/1809295.pdf, S. 3; Response from State Secretary Zypries to the parliamentary question from MP Katharina Dröge (GRÜNE), http://bmwi.de/BMWi/Redaktion/PDF/P-R/Parlamentarische-Anfragen/9-181-182,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf.

Bundestag concludes that CETA can only be decided unanimously in the Council[3]. In contrast, an internal comment from the same department that was drafted at a later date, presumes that the decisions of the Council require a qualified majority[4]. In Austria, a report from the Legal, Legislative and Research Service of the National Council has left open the question whether unanimity will be required in the Council because the Council itself should deal with the question of majority requirements[5]. While the International Law Office of the Austrian Federal Ministry for Europe, Integration and Foreign Affairs concludes in an opinion that CETA could be decided in the Council by a qualified majority[6]. In scientific literature, the detailed publication from Schiffbauer[7], which is frequently referred to in this opinion, concludes that CETA can only be set in motion by unanimous decisions of the Council.

B. Opinion

I. Preliminary remarks

1. CETA as a mixed agreement

In the three draft resolutions of 05. 07. 2016, the European Commission qualified CETA as a mixed agreement[8]. However, it simultaneously declared in these draft resolutions that it maintains its legal position that CETA is considered to be within the exclusive competence of the Union and that "it will be necessary to draw the appropriate conclusions" in the event that the Court of Justice of European Union should class the Free Trade Agreement with Singapore, which has a similar structure, as an EU-only agreement in its assessment, which is expected in 2017. The reasons for the proposal are stated as follows:

> "CETA has identical objectives and essentially the same contents as the Free Trade Agreement with Singapore (EUSFTA). Therefore, the Union's competence is the same in both cases. In view of the doubts raised with regard to the extent and the nature of the Union's competence to conclude EUSFTA, in July 2015 the Commission requested from the Court of Justice

[3]"Questions on the ratification and the provisional application of the Comprehensive Economic and Trade Agreement (CETA)," Draft from PE6: European Parliamentary Research Service of the German Bundestag of 22. 02. 2016, File ref. PE 6 - 3000 - 19/16.

[4]"Questions on European Law in relation to the signing, the provisional application and the conclusion of the Comprehensive Economic and Trade Agreement (CETA)," Comment from the Head of PE6: European Parliamentary Research Service, of 01. 09. 2016.

[5]Research Service of the Austrian National Council, "Summary of the conclusions of the legal assessment of the free trade agreement with Canada: Comprehensive Economic and Trade Agreement (CETA)" dated 19. 05. 2016, P. 21 et seq.

[6]International Law Office of the Austrian Federal Ministry for Europe, Integration and Foreign Affairs (BMEIA) "Free Trade Agreement EU-Canada (CETA); Opinion on the principles of Union Law for the signing and conclusion, on the demarcation of competences EU- MS and on the provisional application," of 12. 05. 2016, REF. BMEIA-EU.8.19.14/0010-1.4/2016, P. 3.

[7]*Schiffbauer*, Majority requirements for voting in the Council on TTIP, CETA & Co, EuZW 2016, 252.

[8]Commission proposals COM(2016) 444 final, COM(2016) 443 final and COM(2016) 470 final.

an opinion under Article 218(11) TFEU (case A – 2/15). In case A -2/15 the Commission has expressed the view that the Union has exclusive competence to conclude EUSFTA alone and, in the alternative, that it has at least shared competence in those areas where the Union's competence is not exclusive. Many Member States, however, have expressed a different opinion. In view of this and to prevent a delay in the signing of the agreement, the Commission has decided to propose the conclusion of CETA as a mixed agreement. The intention was for the agreement to have provisional application until the procedures required for its conclusion have been completed. Nevertheless, this is without prejudice to the views expressed by the Commission in Case A – 2/15. Only once the Court issues its opinion in case A-2/15, will it be necessary to draw the appropriate conclusions."

This means nothing other than that in a state of legal uncertainty, the Commission reserves the right to amend the ratification process, which currently provides for the cooperation of all EU Member States, to the effect that the sole decision of the Union is sufficient. The possible scenarios as a result of this change in procedure are discussed below in sub B. III. However, initially the current proposals from the Commission are applied and used as a basis to establish the existing majority requirements in the Council.

2. Legal majority requirements and opportunistic political considerations

In order to answer the question which majority requirements in the Council of the European Union apply to the decisions on CETA, legal regulations and opportunistic political considerations must not be confused. The opinion that mixed agreements "definitely" require a unanimous decision in the Council because it makes little sense to outvote one or more Member States in the Council if an instrument of ratification is subsequently also required from these outvoted states, may demonstrate a sense of political realism, however, it is devoid of any legal basis under Union law. A realistic assessment of the political processes would also include that a Member State may vote against a mixed agreement in the Council, however, can actually provide a positive instrument of ratification at a later date, for instance after a change in the political majorities. However, as aforementioned, these *political* assessments are irrelevant. The deciding factor is solely which *legal* majority requirements exist in the Council. These requirements can only follow from the current Union law.

II. Premise: CETA as a mixed agreement

In the following, it is presumed that CETA is intended to be concluded as a mixed agreement. This corresponds to the current proposals of the Commission of 05. 07. 2016

1. Majority requirements in the Council for the signing of CETA

In principle, the Council adopts decisions on all matters acting by a qualified majority, Art. 16 (3) TEU. With regard to the treaties with third countries under international law, Art. 218 (8) subparagraph 1 TFEU reiterates this rule: "The Council shall act by a qualified majority throughout the procedure." This also relates to the three procedural steps consisting of the signing, the conclusion and the provisional application. However, Art. 218 (8), subparagraph 2 and Art. 207 (4), subparagraph 2 and subparagraph 3 TFEU, provide for unanimous decisions for specific types of agreements.

a) Impacts of a part requiring unanimity

If an agreement regulates several parts such as CETA, it must be established which voting majority is required if only one part of the agreement affects any of the aforesaid fields[9]. In principle two different approaches would be conceivable, namely that either only the part concerned would require a unanimous vote, whereas the remaining parts of the agreement could be voted on by a qualified majority or if a single part of the agreement requires unanimity, a unanimous decision shall be required for the entire agreement.

EU primary legislation does not contain an express rule in this regard. However, the wording of Art. 207 (4), subparagraph 2 TFEU ("where such an agreement includes provisions") as well as Art. 218 (8) subparagraph 2 TFEU ("when the agreement covers *a* field") indicates that if a single part of the agreement requires unanimity this means that the decision on the entire agreement must be unanimous. A split of votes to individual parts of the agreement is not provided for under primary legislation, considering that the cited standard texts implicitly presume that votes can only be cast for the adoption of the entire text of the agreement. Moreover, the intent and purpose of the special rules for the unanimity requirements is that a sensible balance is created between the interests of the EU in a unified external representation and the autonomous interests of the Member States. This would run counter to the system if voting could be split over individual parts of the agreement. Therefore, it is presumed that if one part of CETA requires unanimity, this means that the Council decision on the entire agreement must be unanimous.

[9]See in this regard *Cottier/Trinberg*, in: v.d.Groeben/Schwarze/Hatje, Art. 207 TFEU, marginal no. 126.

b) Unanimity based on Art. 207 (4) subparagraph 2 TFEU and the CETA rules on foreign direct investments

CETA is an agreement relating to trade in goods and services, the commercial aspects of intellectual property and foreign direct investments. Individually, in accordance with Art. 207 (4), subparagraph 2, part 2 TFEU, however, this would only lead to the requirement for unanimity of a Council decision, "where such agreements include provisions for which unanimity is required for the adoption of internal rules." In view of the current regulations of TEU and TFEU, this reservation would mean that based on Art. 207 (4) subparagraph 2 TFEU, unanimity will in future only be required in rare cases. At any rate, with regard to the trade in goods and services and[10] the commercial aspects of intellectual property[11] a relevant requirement for unanimity is not discernible in the primary legislation with regard to the current question.

However, this does not apply with regard to field of foreign direct investments[12]. The fact that foreign direct investments are also the subject matter of CETA, is evident[13]. In particular, CETA regulates investment protection (Art. 8.12 CETA) and a Tribunal for investments (Art. 8.18 et seqq. CETA) among others, which is understood to only apply to direct investments.

In parallel to the CETA regulations on foreign direct investments, however, there are legislative powers in the EU primary legislation that also require unanimity. These are the following regulatory areas:

aa) Free movement of capital and impacts on existing bilateral agreements

On the one hand the requirement for unanimity may be inferred from the regulations of TFEU on the free movement of capital. In accordance with Art. 64 (2) TFEU the principle of a qualified majority also applies for legal actions in the framework of the free movement of capital for "measures for the movement of

[10]Here the principle of a qualified majority is consistently applicable via Art. 62 in conjunction with Art. 53 (1) TFEU: *Cottier/Trinberg*, in: v.d.Groeben/Schwarze/Hatje, Art. 207 TFEU, marginal no. 127.

[11]In this regard in accordance with Art. 118 TFEU, the requirement for unanimity only applies to regulations establishing language arrangements, which is not relevant here.

[12]With regard to the term e.g. *Bings*, Neuordnung, P. 34 et seq.; *Mayr*, EuR 2015, P. 590 et seq.; *Terhechte*, EuR 2010, P. 520 et seq.; for more details on the background to the EU's now extended competence relating to export, see *Weiß*, in: Grabitz/Hilf/Nettesheim, Art. 207 TFEU, marginal no. 38 et seqq.

[13]See the broad definition of "investment" in Art. 8.1 CETA. Cf. for the remainder the use of this term in the negotiation mandates in relation to CETA (EU Document 9036/09, published and available since 15. 12. 2015 at http://data.consilium.europa.eu/doc/document/ST-9036-2009-EXT-2/de/pdf, Nos. 7 and 33) and TTIP (EU Document 11103/13, available at http://www.bmwi.de/BMWi/Redaktion/PDF/S-T/ttip-mandat,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf, Nos. 8 and 39).

capital to or from third countries involving direct investments." However, in deviation therefrom, Art. 64 (3) TFEU requires a unanimous decision for such measures which "constitute a step backwards in Union Law as regards the liberalisation of the movement of capital to or from third countries."[14] Thus, it must be examined whether this could at least potentially apply in relation to CETA.

Since the Treaty of Lisbon, in accordance with Art. 207 TFEU, the EU already has exclusive competence to conclude agreements for foreign direct investments in the framework of the joint trade policy, which in itself impacts such hitherto existing and concluded bilateral agreements. However, these agreements are not invalid as a result of the shift in competence to the EU, which occurred concurrently with the Treaty of Lisbon[15]. It follows from Union law in an analogy relating to Art. 351 (1) TFEU[16] and in International law simply from the principle *pacta sunt servanda*, cf. also Art. 26 Vienna Convention on the Law of Treaties. However, under Union law there is an obligation of the Member States by analogy to Art. 351 (2) TFEU to amend bilateral agreements to the now applicable Union law, either by way of renegotiations or by the termination of the relevant bilateral contract under International law[17]. This obligation is specified in the Regulation (EU) 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries[18], which simultaneously recognises bilateral agreements upon notification of the Commission by the Member State on a temporary basis - namely until an EU investment protection agreement with the relevant state has entered into force[19].

With this background it must be examined whether there is at least a possibility that provisions of CETA "constitute a step backwards in Union Law as regards the liberalisation of the movement of capital to or from third countries" (Art. 64 (3) TFEU). This is because all bilateral agreements of the Member States on foreign direct investments that were concluded with third countries before the Treaty of Lisbon, must be transitioned "into Union Law" as recognised by Regulation (EU) 1219/2012. These typically also contain rules on the liberalisation of the movement of capital. On the other hand, the text of an EU agreement (here: CETA) relating to foreign direct investments, may infer that Member States must amend or terminate their bilateral investment protection agreements with a third country in order to fulfil their subsequent obligation under the EU agreement, which would result in a step backwards as regards the liberalisation of the movement of capital to or from the concerned third countries As soon as such a possibility cannot be excluded, in accordance with Art. 207 (4), subparagraph 2 in conjunction with Art. 64 (3) TFEU a Council decision on the EU agreement must be unanimous.

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[14]See details in this regard *Wojcik*, in: v.d.Groeben/Schwarze/Hatje, Art. 64 TFEU, marginal no. 15 et seqq.
[15]*Weiß*, in: Grabitz/Hilf/Nettesheim, Art. 207 TFEU, marginal no. 48.
[16]*Herrmann*, EuZW 2010, P. 211; *Terhechte*, EuR 2010, P. 522 et seq.
[17]*Herrmann*, EuZW 2010, P. 211; *Terhechte*, EuR 2010, P. 523 et seq.
[18]Official Journal of the EU (Abl.) 2012 L 351, 40.
[19]*Engel*, SchiedsVZ 2015, P. 222 et seq.; *Weiß*, in: Grabitz/Hilf/Nettesheim, Art. 207 TFEU, marginal no. 50.

CETA does not infer any express obligation of the Member States to interfere with existing bilateral agreements on foreign direct investments. However, CETA - as is typical for investment agreements - contains a most-favoured-nation clause, Art. 8.10 CETA. The scope of such most-favoured-nation clauses is controversial - particularly in view of numerous competing bilateral investment contracts, which may all contain different standards of protection. In view of this it cannot be excluded that in order to realise a practicable most-favoured-nation standard in CETA, the Member States would be inclined, as a result of their obligation to a sincere cooperation with the EU, cf. Art. 4 (3) TEU, to work towards a union-wide unified protection standard for foreign direct investments by adapting their bilateral agreements, because otherwise the most-favoured-nation clause in CETA would be ineffective and impracticable. In isolated cases such an amendment may also constitute a step backwards as regards the free movement of capital in the bilateral relationships. As such a possibility cannot be precluded, the voting of the Council on the signature of CETA in accordance with Art. 207 (4), subparagraph 2 in conjunction with Art. 64 (3) TFEU requires a unanimous decision.

bb) Discrimination of EU citizens

A second starting point could be the impending discrimination of EU citizens. Within the scope of application of EU primary legislation, Art. 18 TFEU prohibits any discrimination on the grounds of nationality. EU citizens (Art. 20 TFEU) must be treated equally under Union law[20]. This does not extend to the national law of the Member States, as far as their own citizens are treated less favourably than other EU citizens; this is also described as "reverse discrimination."[21] A similar phenomenon may occur in the relationship between the EU citizens and the citizens of the EU contract partners - in the case of CETA thus with Canadian citizens. Namely Chapter 8 of CETA introduces privileges for investors. According to the definition in Art. 8.1 CETA, investors are only (as far as natural persons are concerned) nationals of the other contract party; EU citizens may therefore only be investors in the meaning of CETA if they invest in Canada and precisely not within the territory of the Union. Consequently, the investment tribunal introduced in Art. 8.18 et seqq. CETA, is only available to EU citizens, if it concerns disputes arising from investments in Canada, while Canadian nationals may choose with regard to investments in the EU whether they wish to make use of the investment tribunal or would rather utilise the domestic legal system, Art. 8.21 (1) lit. f CETA. Therefore, for EU citizens the same investment in the territory of the Union is only secured by legal protection before the national courts, whereas Canadians may additionally

[20]See for more details *Rust*, in: v.d.Groeben/Schwarze/Hatje, Art. 18 TFEU, marginal no. 29 et seqq.; *Streinz*, in: Streinz, Art. 18 TFEU, marginal no. 8 et seqq.; *von Bogdandy*, in: Grabitz/Hilf/Nettesheim, Art. 18 TFEU, marginal no. 6 et seqq.

[21]*Rust*, in: v.d.Groeben/Schwarze/Hatje, Art. 18 TFEU, marginal no. 47; *Streinz*, in: Streinz, Art. 18 TFEU, marginal no. 62 et seqq.; *von Bogdandy*, in: Grabitz/Hilf/Nettesheim, Art. 18 TFEU, marginal no. 49 et seqq.

choose an investment tribunal at their own discretion. This means that, in relation to legal action arising from investments, Canadian nationals have an advantage over EU citizens[22]. This is described here as discrimination of EU citizens.

It is questionable whether the discrimination of EU citizens is permissible and if it is, under what conditions it is possible. In the prevailing opinion, the discrimination prohibition in Art. 18 TFEU must be interpreted as being relative, thus discrimination may be justified under certain conditions[23]. However, previously this has been interpreted under the premise that EU citizens were mutually treated unequally as a result of their nationality. There is no doctrine on what is referred to as discrimination of EU citizens here, because this type of unequal treatment has not yet been pertinent due to a lack of relevant application. However, there is no reason why the discrimination of EU citizens could not also be justified under certain conditions. One of these conditions is likely to be a unanimous Council decision. Such a requirement for unanimity can be inferred from the provisions of the second part of the TFEU (Art. 18 to 25 - "Non-discrimination and Citizenship of the Union"). This also includes various legislative powers of the Council, some of which requiring a qualified majority (Art. 19 (2), Art. 21 (2), Art. 23 (2), Art. 24 (1) TFEU) and some of which requiring unanimity (Art. 19 (1), Art. 21 (3), Art. 22 (1) and (2), Art. 25 (2) TFEU).

It is noticeable that all of the powers requiring a qualified majority provide for the facilitation of the protection against discrimination and the benefits of having Union citizenship, thus they essentially have a procedural character. In contrast the powers requiring unanimity have more scope, mainly by enabling the expansion of substantive protection against discrimination as well as the protective scope of Union citizenship. However, if expansions of the protection against discrimination and Union citizenship are only possible with a unanimous decision, for systematic reasons a lower standard must not be applicable for the reverse case - in this case lowering the protection against discrimination according to specific sectors through international agreements in favour of nationals of third countries. Therefore, the discrimination of the EU citizens, which comes along with CETA can only be based on a unanimous decision.

[22]Similar result, however, without a further conclusion, see also *Engel*, SchiedsVZ (Arbitration Journal) 2015, P. 225.

[23]*Epiney*, in: Calliess/Ruffert, Art. 18 TFEU, marginal no. 38 et seqq.; *Streinz*, in: Streinz, Art. 18 TFEU, marginal no. 44 et seqq.; *von Bogdandy*, in: Grabitz/Hilf/Nettesheim, Art. 18 TFEU, marginal no. 20 et seqq.

c) Interim conclusion

Art. 207 (4) subparagraph 2 TFEU on its own does not cause a requirement for unanimity of a decision on the conclusion of CETA. However, to this we must add the aspects under Art. 64 (3) TFEU in conjunction with the most-favoured-nation clause in CETA as well as the discrimination of EU citizens produced by CETA. In relation to these two questions, which are governed by the primary legislation of the Union, the Council can only act by way of a unanimous decision, which also extends to the decision on the signing of CETA. The Council can only make this decision by acting unanimously.

2. Majority requirements in the Council for the conclusion of CETA

The aforesaid conclusion is fully transferrable to the decision on the conclusion of CETA. The provisions of Art. 218 (8) subparagraph 1 and subparagraph 2 TFEU must be interpreted to mean that the same majority requirements apply to each individual procedural step. Thus, if a unanimous Council decision is required for the signing, then it equally applies to the conclusion of CETA.

3. Majority requirements in the Council for the provisional application of CETA

a) Unanimous voting provisions in all procedural steps

The unanimity requirement for the Council decision on the contract conclusion for CETA determined above has to automatically apply to a possible preceding decision on the provisional application.

The possibility under Union law, that EU treaties may have provisional application, is found in Art. 218 (5) TFEU. Due to the lack of a specific rule, this applies to agreements on joint trade policies in accordance with Art. 207 TFEU as well as to all remaining international agreements in accordance with Art. 218 TFEU. Therefore, Art. 218 (8) TFEU has unlimited applicability, which in principle prescribes a qualified majority "throughout the entire procedure." If however, as in this case, a unanimous decision is exceptionally required for the conclusion of the agreement, this also encompasses the stated term "entire procedure."[24] Therefore, according to the wording as well as the systematic position of Art. 218 (8) TFEU as the generally applicable standard for the contract conclusion process, all steps

[24]Expressly referred to in *Frenz*, Handbuch Europarecht (Handbook of European Law), Volume 6, marginal no. 5187.; cf. in accordance with *Mögele*, in: Streinz, Art. 218 TFEU, marginal no. 28, who appears to deliberately emphasize "negotiations" (and not just contract conclusions); also *Bungenberg*, in: v.d.Groeben/Schwarze/Hatje, Art. 218 TFEU, marginal no. 58.

relating to the decision of the Council must be made by the majority vote, which also applies to the actual conclusion of the agreement - thus in the case of CETA it must be made unanimously.

This applies for the event that, in accordance with the current proposal of the Commission, CETA should have provisional application in its entirety. However, it also applies if - which cannot currently be predicted - those parts of CETA that would trigger the requirement for unanimity for the signing and the conclusion of the agreement should be excluded from the provisional application. Art. 218 (1), subparagraph 1 and subparagraph 2 TFEU do not allow a differentiation to be made in this regard. The voting provisions refer to the "entire procedure" without allowing a differentiation according to the different procedural steps. In other words: If unanimity is required for the signing and the conclusion, then this also applies to the provisional application.

b) Unanimity in the event of a deviation from a proposal from the Commission

Irrespective of the above voting rule, the Council may amend a proposal from the Commission by acting unanimously, Art. 293 (1) TFEU. The unanimity requirement will arise if the Council only intends to apply parts of CETA provisionally, while the (still) current proposal of the Commission is aimed at the provisional application of CETA in its entirety.

III. Premise: CETA as an EU-only agreement

While the Commission and the Member States currently presume that CETA will be concluded as a mixed agreement, a different legal conclusion may be reached once the examination before the Court of Justice of the European Union (CJEU) on the EU-Singapore Agreement (EUSFTA) has been concluded[25]. The opinion of the CJEU may result in CETA having to be classed as an EU-only agreement. For this constellation the question arises whether and how the Commission and the Council must be respond.

1. Amended structure of the agreement

If CETA is considered an EU-only agreement, this means that only the Union would become a contracting party. In the internal relationship of the Union, the Member States would then no longer have the competence to enter into their own international commitments in CETA. If they nevertheless issued instruments of ratification, they would be acting without competence, thus ultra vires. With regard to instruments of ratification previously issued by individual Member States this would mean that these instruments would be automatically void per se.

[25]EuGH 2/15 - EUSFTA

2. Required amendments to the text of the agreement

A "silent" switch from a ratification process of CETA as a mixed agreement that has been set in motion to a ratification process, for which only the EU is responsible, is not possible. The ratification process would have to be aborted and the European Union would have to announce to Canada that CETA cannot be ratified as intended. Simultaneously, the Union would have to take steps for the renegotiation of the agreement. This is because the text of the agreement would have to be amended.

At present the text is set out as a mixed agreement. It would have to be amended to the new contract structure of a simple bilateral agreement between Canada and the EU.

3. Internal competences of the Union and majority requirements in the Council

In the organisational structure of the Union, the Commission, the Council and the Parliament are competent in accordance with Art. 218 TFEU. This particularly means that the Commission sends proposals to the Council to annul the previous Council decisions on the signing, the conclusion and the provisional application and to simultaneously issue a mandate for renegotiations to the Commission.

The majority requirements for the decision of the Council in this matter are also found in Art. 218 (8) TFEU. In relation to the previous Council decisions that must be annulled, according to the principle of the *actus contrarius* theory, these annulment decisions can also only be made unanimously because the decisions that are to be annulled were made unanimously. There is no change in the aforesaid legal position in respect of the mandate for the renegotiations and all subsequent procedural steps (signing, provisional application and conclusion). If the contents of the agreements remain unchanged, these decisions can only be made unanimously as a result of the applicable exceptions in Art. 207 (4) subparagraph 2 TFEU.

C. Conclusion

I. The Council may only accept the current proposal of the Commission to sign CETA as a mixed agreement by a unanimous decision.

II. The Council may only accept the current proposal of the Commission to conclude CETA as a mixed agreement by a unanimous decision.

III. The Council may only accept the current proposal of the Commission to preliminarily apply CETA in its entirety as a mixed agreement by a unanimous decision.

IV. If the Commission should amend its proposal on the provisional application so that certain parts of CETA should not take provisional effect, this shall not change the requirement for unanimity. The Council may also only accept such an amended proposal from the Commission by a unanimous decision.

V. If, after the ratification process has been set in motion, it should transpire from the opinion of the CJEU examination of the EU-Singapore Agreement that CETA should be considered an EU-only agreement, the ratification process cannot be continued in its present form.

VI. Ratification proceedings already implemented in the Member States would then become void per se because the Member States would lack competence. It would not be permitted to implement further ratification proceedings in the Member States.

VII. The European Union would have to announce to Canada that the ratification of CETA in its original form is not possible and would have to take steps to conduct renegotiations in order to change the contract text from a mixed agreement to an EU-only agreement.

VIII. At the proposal of the Commission, the Council would have to annul the previous Council decisions on CETA and issue a mandate for renegotiations to the Commission. The Council can only make the annulment decision by acting unanimously. If the remainder of the contents of the agreement remain the same - the Council may only issue the new mandate to the Commission for renegotiations and all decisions in the further procedural steps (signing, provisional application and conclusion) by reaching a unanimous decision.