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Implementation of ‘passerelle’ clauses in the EU Treaties

European Parliament resolution of 11 July 2023 on the implementation of the passerelle clauses in the EU Treaties (2022/2142(INI))

(C/2024/3996)

The European Parliament,

- having regard to the *passerelle* clauses in the EU Treaties,
 - having regard to Article 31(3) and Article 48(7) of the Treaty on European Union (TEU) and Article 81(3) second subparagraph, Article 153(2), Article 192(2) second subparagraph, Article 312(2) second subparagraph and Article 333 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to the Commission communication of 12 September 2018 entitled ‘A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy’ (COM(2018)0647),
 - having regard to the Commission communication of 15 January 2019 entitled ‘Towards a more efficient and democratic decision making in EU tax policy’ (COM(2019)0008),
 - having regard to the Commission communication of 9 April 2019 entitled ‘A more efficient and democratic decision making in EU energy and climate policy’ (COM(2019)0177),
 - having regard to the Commission communication of 16 April 2019 entitled ‘More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting’(COM(2019)0186),
 - having regard to its resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty ⁽¹⁾,
 - having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union ⁽²⁾,
 - having regard to its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties ⁽³⁾,
 - having regard to Rule 54 of its Rules of Procedure, to Article 1(1)(e) of the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports and to Annex 3 thereto,
 - having regard to the opinions of the Committee on Foreign Affairs and the Committee on Economic and Monetary Affairs,
 - having regard to the letter from the Committee on Budgets,
 - having regard to the report of the Committee on Constitutional Affairs (A9-0208/2023),
- A. whereas unanimity in the Council has become one of the biggest impediments to reaching rapid, effective and ambitious decisions; whereas the Council resorts to unanimity even in places where the Treaties provide for qualified majority voting (QMV);
- B. whereas while wide agreement among Member States is desirable, on different occasions, some Member States have used their right to veto, block or delay the EU decision-making process, notably in order to raise concerns about or even exert undue pressure on other unrelated issues; whereas this is concerning, as unanimity should be counterbalanced by a high level of responsibility and should be in line with the principle of sincere cooperation enshrined in Article 4(3) TEU;

⁽¹⁾ OJ C 252, 18.7.2018, p. 215.

⁽²⁾ OJ C 252, 18.7.2018, p. 201.

⁽³⁾ OJ C 493, 27.12.2022, p. 130.

- C. whereas a growing number of challenges and threats, including Russia's war of aggression against Ukraine, as well as possible future enlargements of the EU, underscore the need to urgently reform the Union's decision-making procedures, including for the allocation of sufficient resources through the 2024 mid-term review of the 2021-2027 multiannual financial framework (MFF);
- D. whereas on several occasions, unanimity has prevented the EU from acting rapidly and effectively on issues related to the common foreign and security policy (CFSP) and from taking important decisions on energy and environmental policy; whereas national vetoes have also delayed the approval of key policies in the field of taxation, such as the Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union ⁽⁴⁾, and have blocked the adoption of proposals such as the Common Consolidated Corporate Tax Base; whereas these key policies could also benefit the single market and the Union's ability to achieve its economic, green, social and digital objectives;
- E. whereas *passerelle* clauses are mechanisms provided for in the Treaties to make EU decision-making more flexible; whereas they cannot increase or decrease EU competences, and can only modify decision-making rules by allowing a move from unanimity to QMV and/or by introducing the ordinary legislative procedure (OLP) in specific cases in which the Treaties provide for a special legislative procedure;
- F. whereas there are two types of *passerelle* clauses:
- (a) general *passerelle* clauses, which require unanimous authorisation by the European Council, as well as Parliament's consent, and can be vetoed by national parliaments;
 - (b) special *passerelle* clauses related to six specific policy areas, which require unanimous authorisation by the European Council or the Council and in which Parliament's role is regrettably marginal;
- G. whereas there are 94 cases in the Treaties where the European Council or the Council can act by unanimity; whereas in 67 of these cases, *passerelle* clauses can be used to move from unanimity to QMV ⁽⁵⁾; whereas in other cases in which unanimity is provided for, such as the ordinary Treaty-revision procedure, the accession of new Member States and decisions with military or defence implications, *passerelle* clauses cannot be used;
- H. whereas in 2018 and 2019, the Commission presented four communications containing proposals for the activation of *passerelle* clauses for foreign and security policy, tax policy, energy and climate policy and social policy;
- I. whereas Parliament has called for the activation of *passerelle* clauses in over 40 resolutions since the entry into force of the Treaty of Lisbon;
- J. whereas the Council has never effectively followed up on these proposals and has only recently held the first substantive discussions in years on the possible activation of *passerelle* clauses;
- K. whereas *passerelle* clauses have only been used once – in 2004 – to move to QMV and codecision for specific decisions on visas, asylum, migration and the free movement of persons ⁽⁶⁾; whereas no *passerelle* clause has been activated since then;
- L. whereas the Conference on the Future of Europe proposed to move from unanimity to QMV in order to improve the EU's decision-making procedures and ensure the EU's ability to act rapidly and effectively, while maintaining unanimity in a few areas, namely the admission of new countries to the EU and changes to the fundamental principles of the EU as stated in Article 2 TEU and the Charter of Fundamental Rights of the EU ⁽⁷⁾;
- M. whereas in its resolution of 9 June 2022, Parliament called for a convention to revise the Treaties and proposed to move from unanimity to QMV in relevant areas, including the activation of *passerelle* clauses;

⁽⁴⁾ Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (OJ L 328, 22.12.2022, p. 1).

⁽⁵⁾ General Secretariat of the Council, 'Proposals and related specific measures contained in the report on the final outcome of the Conference on the Future of Europe: Updated preliminary technical assessment', note 10033/22, 30 November 2022.

⁽⁶⁾ Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (OJ L 396, 31.12.2004, p. 45).

⁽⁷⁾ Conference on the Future of Europe, Proposal 39 – 'EU decision making process', *Report on the Final Outcome*, May 2022.

General considerations

1. Believes that the Union must be able to respond rapidly and effectively to the unprecedented challenges it is facing, instead of at times relying on emergency procedures requiring unanimity voting in Council with no formal involvement of Parliament; regrets that, even though the Union has proven in specific cases to be able to act decisively, the unanimity voting requirement has often blocked EU action in different areas;
2. Considers it urgent, therefore, to go beyond unanimity and move as soon as possible to QMV and OLP in key policy fields in order to improve the EU's capacity to act; calls on the Council to also abandon the practice of making decisions by unanimity in policy fields where QMV is already provided for by the Treaties;
3. Welcomes the conclusions of the Conference on the Future of Europe and reaffirms its commitment to effectively following up on the citizens' recommendations;
4. Reiterates its call for the Treaties to be amended urgently ⁽⁸⁾; urges the Council to forward Parliament's proposal to the European Council and calls on the Commission to take responsibility on this matter pursuant to Article 48(3) TEU;
5. Highlights that the 'untapped potential' of the Treaty of Lisbon and the possible activation of *passerelle* clauses have often been used as an excuse to postpone a constructive discussion on Treaty changes and cannot be further invoked as an alternative or preliminary step ahead of Treaty revisions; regrets the absence of tangible actions by the Member States to make use of this untapped potential;
6. Underlines that, while urgent, possible Treaty changes extending QMV to areas where unanimity is currently required would take time before coming into force, especially if these are proposed following a convention as part of an ordinary Treaty-revision procedure;
7. Recalls that, in the event of prolonged stalemates caused by unanimity, enhanced cooperation and constructive abstention could be used where provided for in the Treaties;
8. Stresses that *passerelle* clauses provide an important tool to improve the EU's ability to act rapidly and effectively;
9. Highlights, that, while they could be used immediately, *passerelle* clauses can currently only be activated following a unanimous vote in the Council or the European Council; reiterates ⁽⁹⁾, therefore, that the activation of *passerelle* clauses should be possible through QMV and calls for the Treaties to be changed to allow for this;
10. Welcomes the fact that, in recent discussions in the Council, a majority of Member States have expressed their willingness to use *passerelle* clauses in certain fields and on a case-by-case basis; regrets that, unfortunately, no formal decision on their activation has yet been taken;
11. Urges the current and upcoming Council presidencies to follow up on these discussions in an effective way by, inter alia, adding the activation of *passerelle* clauses to upcoming meetings of the Working Party on General Affairs and the General Affairs Council;
12. Calls on the Commission to evaluate and recommend, where possible, the activation of *passerelle* clauses when drafting its work programme and when issuing legislative proposals in policy areas where unanimity or a special legislative procedure is required;

⁽⁸⁾ OJ C 493, 27.12.2022, p. 130.

⁽⁹⁾ Idem.

Areas for the activation of passerelle clauses

Common foreign and security policy

13. Underlines that the CFSP is an area in which the EU's ability to act swiftly determines the effectiveness of its decisions; highlights that the activation of *passerelle* clauses in this field would therefore strengthen not only the Union's ability to act rapidly and effectively, but also its credibility on the global stage;

14. Stresses that *passerelle* clauses should be used to move towards QMV in specific fields of the CFSP, in particular for:

- (a) the adoption of restrictive measures against governments of non-EU countries, non-state entities and individuals, including those implemented under the EU Global Human Rights Sanctions Regime and those related to Russia's war of aggression against Ukraine;
- (b) the adoption of statements or decisions on international human rights issues;
- (c) and decisions regarding civilian common security and defence policy (CSDP) missions;

15. Welcomes the fact that some of these specific fields of the CFSP were identified by the Commission ⁽¹⁰⁾ as areas that would immediately benefit from the application of *passerelle* clauses and that many Member States have strongly supported activating *passerelle* clauses in these fields in recent discussions in the Council; urges the current and upcoming Council presidencies to generate a consensus in the Council around gradually making use of *passerelle* clauses in these fields of the CFSP;

16. Welcomes the recent use of constructive abstention, as provided for in Article 31 TEU, by certain Member States on key CFSP decisions; believes that, pending the activation of the *passerelle* clauses in some areas of the CFSP, constructive abstention should be used more often by Member States to overcome potential deadlocks created by unanimity;

Fiscal policy and taxation

17. Underlines the fact that the *passerelle* clauses have never been used in the area of taxation;

Energy and environment

18. Highlights that moving to QMV and OLP for certain aspects of environmental and energy policies is particularly urgent for implementing the European Green Deal, facilitating a clean and just transition and adopting effective measures to address the consequences of the ongoing energy crisis and the environmental and climate emergency, in line with previous Parliament resolutions ⁽¹¹⁾;

Social and anti-discrimination policies

19. Underlines that, in the context of evolving labour markets, it is becoming increasingly important for the EU to support and complement Member States' actions in tackling social issues;

20. Stresses the need to use the general *passerelle* clauses for non-discrimination measures provided for in Article 19 TFEU;

21. Considers it important to evaluate the potential impact of using the sector-specific clause provided for in Article 153(2) TFEU to strengthen the EU's ability to implement measures covering all workers' rights;

⁽¹⁰⁾ COM(2018)0647.

⁽¹¹⁾ European Parliament resolution of 28 November 2019 on the climate and environment emergency (OJ C 232, 16.6.2021, p. 28).

22. Stresses that any activation of *passerelle* clauses in these fields should incorporate dialogue with European social partners, fully respecting their role and agreements, and should include measures to protect the social *acquis*;

Family law with cross-border implications

23. Stresses the importance of moving to the OLP in areas related to the protection of fundamental rights in the Union, such as through the activation of the sector-specific *passerelle* clause related to family law with cross-border implications (Article 81(3) second subparagraph TFEU);

Enhanced cooperation

24. Reiterates its commitment⁽¹²⁾ to not give its consent to any new enhanced cooperation proposals unless the participating Member States commit to activate the sector-specific *passerelle* clause in Article 333 TFEU to move to QMV and to OLP;

Electoral rights

25. Calls for reflection on the possibility of moving towards QMV in the Council and to OLP in the specific fields regulating the democratic foundations of the EU, in particular for:

- (a) the election of the Members of the European Parliament by direct universal suffrage (Article 223(1) TFEU), which would still be subject to approval by the Member States in accordance with their respective constitutional requirements;
- (b) the exercise of the right to vote and to stand as a candidate in elections for the European Parliament and municipal elections for citizens of the Union residing in a Member State of which they are not nationals (Article 22 TFEU);

Time frame for the gradual activation of passerelle clauses

Short-term priority areas (by the end of 2023)

26. Calls on the European Council to adopt a decision under Article 31(3) TEU establishing that restrictive measures (Article 29 TEU), such as those established under the EU Global Human Rights Sanctions Regime or those imposed in response to Russia's war of aggression against Ukraine, are to be taken by QMV;

27. Calls on the European Council, in light of the ongoing energy crisis, to activate the general *passerelle* clauses to allow measures on energy policy that are primarily fiscal (Article 194(3) TFEU) to be approved by QMV and OLP;

28. Calls on the Commission, in light of the broader context of the climate and environmental emergency and the objectives set out in the European Green Deal, to present a proposal for the activation of the special *passerelle* clause provided for in Article 192(2) second subparagraph TFEU in order to move to OLP for certain environmental provisions;

29. Calls on the European Council to activate the *passerelle* clause provided for in Article 312(2) second subparagraph TFEU for the adoption of a revision of the current MFF following the 2024 mid-term review that will be presented by the Commission;

Medium-term priority areas (by the end of 2024 or the current Commission's mandate)

30. Calls on the European Council to urgently use the *passerelle* clause under Article 31(3) TEU to ensure that Union positions on human rights in multilateral forums (Article 29 TEU), international agreements in the area of the CFSP (Article 37 TEU) and CSDP civilian missions (Article 42(4) and Article 43 TEU) are taken by QMV;

⁽¹²⁾ OJ C 252, 18.7.2018, p. 215.

31. Reiterates its call on the Commission and the Council to submit and adopt a decision to include violence against women and girls and other forms of gender-based violence as one of the areas of crime defined in Article 83(1) TFEU;

Long-term priority areas (as soon as possible in the next legislative term)

32. Urges the European Council to activate *passerelle* clauses to move to QMV for decisions in all areas of the CFSP, except for the creation of military missions or operations with an executive mandate under the CSDP, pending the entry into force of relevant Treaty changes;

33. Calls on the European Council to activate the general *passerelle* clauses to allow certain social policy and anti-discrimination measures to be approved by OLP and QMV;

34. Calls for the European Council or the Council to activate the general *passerelle* clauses to move to QMV and OLP for decisions in all possible areas related to the democratic functioning of the Union, including those linked to elections for the European Parliament;

35. Invites the Council and the Commission to engage in discussions with Parliament in line with the timeline above;

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36. Instructs its President to forward this resolution to the Council and the Commission.
