

# Qualified majority voting in foreign and security policy

## Pros and Cons

### SUMMARY

In her first State of the Union speech, and in the section of the speech most applauded by the European Parliament, European Commission President Ursula von der Leyen called for the use of qualified majority voting (QMV) in areas such as sanctions and human rights. The crises and security challenges accumulating in and around the European Union have added to the urgency of having a more effective and rapid decision-making process in areas pertaining to the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). The core encumbrance against unanimous EU agreement on foreign policy is argued to be the absence of a common strategic culture among EU Member States.

The Lisbon Treaty's architects have equipped the EU Treaties with '*passerelle* clauses' – provisions usually aimed at modifying the decision-making of the Council of the EU. The *passerelle* clause for CFSP is Article 31(3) of the Treaty on European Union, which empowers the European Council to, by unanimous agreement, allow the Council of the EU to take decisions by QMV in some areas of the CFSP. Another option is an emergency brake – cancelling a vote for vital reasons of national policy – while constructive abstention is an option which allows a Member State to abstain from a unanimous vote without blocking it.

Since 2016, the EU has witnessed growing momentum to shape its identity as a security provider and peace promoter. From 2020 and until 2022, it is undertaking a strategic reflection process taking the form of a 'strategic compass', whereby the threats, challenges and objectives for the Union in security and defence will be better defined. It is in this context that the debate about QMV in foreign and security policy has resurfaced and continues to be the subject of policy discussions. Nevertheless, recent efforts to innovate in the EU's methods for adopting sanctions in the field of human rights abuses (the European Magnitsky Act) have been unsuccessful in their attempt to move from unanimity to qualified majority voting.



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## Political context: Pressure for a more effective foreign policy

Back in 1990, the [European Council](#) had already noted the need to review mechanisms, 'so as to increase the coherence, speed and effectiveness of the Community's international action'. 'To be a global leader, the EU needs to be able to act fast', in the [words](#) of European Commission President Ursula von der Leyen, before her election to the post. Responding to criticism that the European Union is too slow to act, she has [urged](#) Member States to 'be courageous and finally move to qualified majority voting'. In her first ever State of the Union, and in the section of the speech most applauded by Members of the European Parliament in plenary, President von der Leyen called for the use of qualified majority voting (QMV) in areas such as sanctions and human rights. Her predecessor, Jean-Claude Juncker, [spoke](#) of the need for *Weltpolitikfähigkeit* – a capacity to shape global affairs – in the Union's foreign and security policy. One step closer to achieving this would be, in his view, moving to QMV in the same areas identified by President von der Leyen, plus civilian missions in the framework of the Common Security and Defence Policy (CSDP).

In September 2018, under President Juncker's leadership, the Commission adopted a [communication](#) exploring such avenues for foreign-policy-making. Observing that QMV in the Council has evolved to be the standard voting rule in EU decision-making, the document put forward an argument supporting QMV for potentially opening up more 'space for discussion and pragmatic outcomes that reflect the interests of all' (see below). The crises and security challenges accumulating in and around the EU in recent years have added to the urgency of having a more effective and rapid decision-making process in areas pertaining to the Common Foreign and Security Policy (CFSP). The principle of unanimity governing decision-making in CFSP and CSDP has been put in the spotlight by key events in the EU's strategic environment. One example is the situation in [Belarus](#), where Aleksander Lukashenko stands accused of election fraud, repression of the opposition, and human rights abuses against peaceful protesters. Although the [European Council](#) was quick to react diplomatically to those events, the [plan to impose sanctions](#) suffered delays due to a lack of agreement by all 27 Member State. A parallel crisis ongoing in the [eastern Mediterranean](#) was considered a factor in that delay. Previous failed unanimity [attempts](#) occurred in relation to China, Venezuela and migration.

As the threats to the EU's security have become borderless, unpredictable and highly volatile, EU Member States have taken strong measures to boost their defences. Examples include the European Defence Fund, the European Peace Facility and Permanent Structured Cooperation. However useful these initiatives prove in terms of defence and military cooperation, they have [limited scope](#) in promoting a '[common strategic culture](#)', or a shared reading of strategic threats and challenges by all Member States. Experts largely agree that the absence of this, due to diverse historical experiences, culture, economies and threat assessments, together with instances of distinct national interests are what encumbers unanimous agreement on foreign policy. At the same time, the promotion of EU values – from multilateralism to human rights – is to be reflected in all its policies, foreign and domestic, as enshrined in the Lisbon Treaty.

### What is qualified majority voting?

For a qualified majority to be reached during a [Council](#) vote (acting upon a proposal by the Commission or HR/VP) two conditions have to be met:

- **55 % of Member States** vote in favour (15 out of 27),
- the votes in favour are cast by Member States representing at least **65 % of the European Union's population**.

Abstentions count as votes against. Different percentages apply where the Council does not act upon a proposal of the Commission or the HR/VP (72 % votes in favour representing 65 % of the population). In cases where a proposal does not concern all Member States but only some of them (i.e. opt-outs such as for Denmark in CSDP, or in enhanced cooperation), 55 % of participating Member States are sufficient to adopt a decision.

Qualified majority voting is the [most widely used](#) voting method (around 80 % of all EU legislation) in the Council – ranging from humanitarian aid and external border controls to police cooperation.

## From unanimity to qualified majority voting

Expressing the will to [change course](#) on 'simple statements on EU values [being] delayed, watered down or held hostage for other motives', President von der Leyen reiterated the European Union's responsibility to 'call out human rights abuses whenever and wherever they occur'. Additionally, she proposed that sanctions be considered for QMV, and announced a proposal for an [EU human rights sanctions regime](#) (see below). In her [mission letter](#) to the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP), [Josep Borrell](#), President von der Leyen mandated him to **make use of Treaty provisions** allowing the Union to 'overcome unanimity constraints that hamper our foreign policy'.

## EU decision-making in foreign policy

Foreign and security policy is generally regarded as a classical executive power and a strong symbol of national sovereignty. At the EU level, the CFSP is largely an intergovernmental policy. It is for this reason that decisions on the European Union's external relations and foreign affairs are taken by the Council of the EU acting by **unanimity**,<sup>1</sup> based on European Council guidelines. [Article 31\(1\)](#) of the Treaty on European Union (TEU) governs the conditions for such decisions. Achieving unanimity in foreign policy at the EU level can be time-consuming and, as shown above, can result in the paralysis of the CFSP decision-making system since each Member State is equipped with a veto. Despite the unanimity rule being 'at the heart of the [intergovernmental image of the CFSP](#)', the Lisbon Treaty architects have left some room for manoeuvre.

## What do the Treaties allow?

The Lisbon Treaty puts several legal mechanisms at policy-makers' disposal to enable more flexible decision-making. Generally known as **passerelle clauses** or, in the words of [Jean-Claude Juncker](#), 'lost treasures', such provisions are aimed in particular at modifying the decision-making of the Council of the EU. It is important to note that although EU Treaties are subject to explicit revision procedures (Article 48 TEU), they are not meant to be static and a certain flexibility may allow the EU to cope with changing political and geopolitical circumstances. They can enable a certain [dynamic](#) adaptation to changing realities. Article 48(7) TEU is considered a true innovation of the Treaty as it contains the two general *passerelle* clauses.<sup>2</sup> There are also six special *passerelle* clauses in the Treaties.<sup>3</sup>

Although the general rule of decision-making in foreign and security policy is unanimity, [Article 31\(2\)](#) empowers the Council with several exceptional cases for which it may use QMV. Namely:

- defining an EU position on the basis of a European Council decision related to the EU's strategic interest and objectives;
- defining an EU position based on a proposal from the HR/VP as requested by the European Council upon the latter's initiative or upon the initiative of the HR/VP;
- implementing decisions already taken defining a Union action or position;
- and when appointing special representatives.

### Article 31(3) TEU

The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

The special *passerelle* clause of the CFSP is incorporated in **Article 31(3)** TEU (see box), empowering the European Council, by unanimous agreement, to allow the Council of the EU to take decisions by QMV in specific areas of the CFSP. This mechanism is limited by Article 31(4) which pointedly excludes 'decisions having military or defence implications'. Article 31(2) includes an important provision in the form of an **emergency brake** which inhibits the calling of a vote in the Council if a

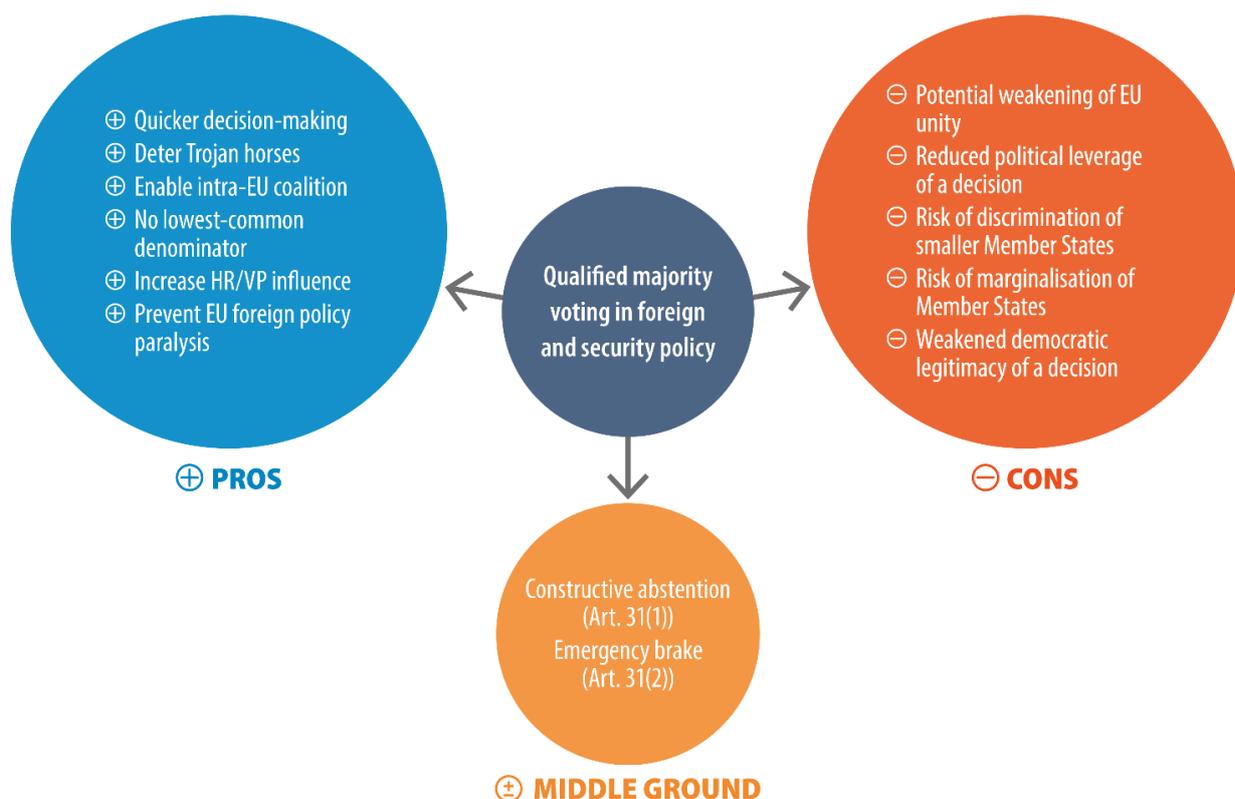
Member State invokes 'vital and stated reasons of national policy'. Legal scholars are divided as regards the [relationship](#) between the general *passerelle* in Article 48(7) and the CFSP-specific Article 31(3), but the German Federal Constitutional Court helped clarify the debate by ruling that the two provisions should be treated separately.

The CFSP *passerelle* clause has so far not been used. Scholars [point out](#) that the 'debate on majority voting has been present in CFSP negotiations from the outset' and was 'never completely ruled out'. There have been [attempts](#) in the past, particularly by Member States such as France and Germany, which in their June 2018 [Meseberg Declaration](#) called for the expansion of QMV to CFSP to increase the effectiveness of EU decision-making in the face of security challenges. Nevertheless, no attempts have so far survived vetoes in the European Council. In 2018, Commission President Juncker had [invited](#) Member States to decide at the [Sibiu summit](#) on 9 May 2019 to expand the scope of QMV in CFSP through recourse to the *passerelle* clause, but that attempt proved unsuccessful.

Finally, the Lisbon Treaty provides the option of **constructive abstention**, namely in the second paragraph of Article 31(1). An abstention becomes constructive when a Member State makes a corresponding formal declaration. This would allow the Member State to abstain from a unanimous vote while being relieved from the obligation to apply the respective decision. Such an action implies the acceptance that the other Members may continue with the respective decision. A practical example is the European Union's 2008 decision to set up a civilian CSDP mission in [Kosovo](#).

Only the *passerelle* clauses on CFSP and on the multiannual financial framework (Article 312(2)(2)TFEU) require the unanimous agreement of the European Council, without any consultative role of either Parliament or other EU institutions and without a formal role of the Commission as proponent. This is further evidence that decision-making in CFSP, including its modification, remains a solid prerogative of Member States.

Figure 1 – The pros and cons of QMV in foreign and security policy



Source: EPRS, based on the studies discussed in the briefing.

## The *pros* of QMV in foreign policy

Highlighting areas in which the EU can already take decisions by QMV such as single market rules or climate targets, HR/VP Borrell [argues](#) that these 'are not secondary issues of lesser sensitivity', in comparison to CFSP, but rather with 'big national interests at stake'. He observes that even in policy areas falling under QMV, EU Member States in practice do not use the method. The HR/VP correlates this with the spirit of unity and compromise embedded in the Union. Nevertheless, he notes, the value of having the QMV option lies in its function as 'an **incentive** for Member States to move and search for common ground'. The QMV voting method allows the EU to take swift decisions on important topics, even if not all Member States can agree. In the HR/VP's view, QMV would offer an escape from 'the paralysis and delay of the unanimity rule', as happened during the launch of [CSDP Operation Iriini](#), when a non-participating country prevented 'the other 26 from moving forward'. Arguing that this would not be a silver bullet, he calls for the extension of QMV to areas susceptible to blockages such as human rights and sanctions. During a livestreamed [conference](#) celebrating the 10th anniversary of the European External Action Service on 1 December 2020,<sup>4</sup> the HR/VP encouraged Member States to make more widespread use of constructive abstention (which allows disagreement without obstruction) as a first step towards quicker foreign policy-making.

The above-mentioned September 2018 [communication](#) from the Juncker Commission pointed out that, in international politics, 'time is of essence' and that the unanimity rule has 'increasingly affected the speed and ability of the EU to act' globally, preventing the EU 'from achieving its full potential in foreign policy'. The document brought up experience from other policy areas where QMV is the rule to illustrate its facilitation of 'common solutions' and role as a 'powerful catalyst to engage all actors'. Using trade policy as an example where QMV is used and where national economic interests may diverge, it noted that 'Member States always preferred to decide by consensus'. This practice allowed the EU to 'fulfil its potential on world trade'. The communication also suggested that introducing QMV in some areas of CFSP would help prevent Member States holding up a vote in one policy area as a bargaining chip for another, as the 2018 example of extending the EU's capacity-building mission in the Sahel exemplified. The communication proposed three areas that would 'immediately benefit' from QMV: EU positions on human rights in multilateral fora; adoption and amendment of EU sanctions regimes; and civilian CSDP missions.

Some experts [argue](#) that a reform of the voting procedure in foreign, security and defence policy would 'enable Brussels to act more quickly' and would increase the influence of the HR/VP. This would also remove, they hold, 'the bureaucratic deterrent' of working through the EU, and incentivise smaller Member States to initiate proposals and organise coalitions around them. Such a shift could not only see the influence of smaller states increase, but also 'the clout of Brussels' as well as the emergence of a more common strategic culture. One of the risks that the unanimity rule brings is the potential influence of an external actor upon an individual Member State, which is enough to compromise an EU decision. Another risk is for coalitions outside the EU framework to become more commonplace than EU-level decision-making if the EU machinery becomes stuck.

While [The Economist](#) recognises the value of the EU's consensus culture, it also points out the prospect of 'lowest-common-denominator outcomes'. Another expert [calls](#) for the EU to give 'QMV a chance in foreign policy', not only to react faster but also, as highlighted above, to reduce the risk of 'Trojan horses' in the form of 'adversarial third countries' potentially exploiting friendly bilateral relationships with a specific Member State. That author suggests the possibility of introducing QMV initially only for human rights matters, hoping for a domino effect in other CFSP areas too. Similarly, another author, writing for the [Centre for European Reform](#), states that QMV would be helpful in incentivising unity in cases where differences between Member States are small and when only one or a small group of Member States block decisions. While QMV 'cannot be a panacea for all of the EU's foreign policy ills', it would help the EU become a more effective foreign policy actor, and combat 'divide-and-rule tactics' employed by adversaries. He argues that the greatest added value of QMV would be in the area of sanctions.

During a 14 October 2020 policy [roundtable](#) organised by the European Parliamentary Research Service (EPRS), one expert proposed introducing QMV for the entire CFSP (including CSDP), with the single exception of troop deployments by Member States. Since the EU has competence over trade and the euro, the expert holds that such a move is not such a big step after all. Another expert also pointed out the decision-making advantages of the QMV method while highlighting the availability of the emergency brake to the Member States (Article 31(2), see above).

## The *cons* of QMV in foreign policy

In defence of the unanimity rule, European Council President Charles Michel [points out](#) that 'this requirement pushes us to work unremittingly to unite the Member States'. While recognising the decision-making lag caused by unanimity, he explains that the EU's strength lies in its unity through a 'lasting commitment by the 27 countries' to the adopted decision. Defending the legitimacy conferred on EU decisions by the unanimity rule, President Michel argues that 'political confrontations' on foreign policy are 'an indispensable part of the process of democratic debate'.

*The Economist* calls attention to the '[legitimate reservations](#)' of smaller Member States 'about surrendering their national veto', and their fear of being marginalised by the Member States with bigger populations which could reach the QMV threshold in smaller numbers. Nevertheless, as the current political discussion proposes using QMV exclusively for decisions over human rights, sanctions and, in 2018, also in civilian CSDP, the author suggests such worries should diminish.

Other authors defend the [value of the national veto](#) for smaller countries which see it as an 'insurance policy or emergency brake' to protect national interests. Another expert present at the above-mentioned EPRS roundtable reiterated the fear of smaller Member States of being outvoted by bigger ones, casting a shadow over the method. She additionally points out the scar left by the 2015 decision on [migration policy](#) taken by QMV, which disturbed harmony among EU members. A legal academic argues that a potential democratic deficit stemming from such a decision, particularly as regards sanctions, could be [balanced](#) through increased 'involvement of the European Parliament in CFSP decision-making and of the European Court of Justice'. Their role as forums where Members of the European Parliament and Member States can 'assert their position and (at the very least) feel better represented' could be beneficial. Other scholars also point out that QMV in CFSP is [problematic](#) absent a 'collective sense of purpose and community', as it might risk weakening 'the EU's internal legitimacy and external credibility'. As the EU's democratic legitimacy in CFSP is derived from the veto available to every Member State, the authors argue that 'stronger control by the European Parliament' would be necessary to 'secure the legitimacy of the CFSP'. As regards external credibility, they point out the lack of enforcement mechanisms to ensure that Member States outvoted implement a certain policy adopted through QMV.

Pointing out that foreign policy-making 'is about quick reaction, flexibility and adaptability', a paper by the [Estonian international centre for defence research and security](#) argues that 'adjusting voting systems' is not a solution for this, 'since it would kill off the EU's unique selling point on the world stage: its size'. The author notes that switching to QMV would fragment the EU's strength in the world, arguing instead that the EU level should develop closer relations with the capitals to have 'a better grasp of Member States' interests and limits'. In a similar vein, another expert [warns](#) that abolishing unanimity would imply 'a significant change to the perceived sovereign status of Member States and the Union as a whole'. Lastly, another deterrent to using QMV is that national rules in some Member States, such as Denmark and Germany, would require [parliamentary consent](#) prior to any usage of the *passerelle* clause.

## Where is the compass pointing?

The discussions on introducing QMV in foreign policy coincided with a strong momentum to shape the European Union's identity as a security provider, peace promoter and global actor. The 2016 [EU Global Strategy](#) emphasises the European Union's ambition to be a credible and responsive actor in its neighbourhood and the world. Multiple security and defence integration milestones succeeded

the strategy, and in part led to discussions about unlocking the [potential of the EU Treaties](#) to respond to current challenges. In January 2019, the Commission also [proposed](#) extending QMV to areas such as tax policy, by means of using the respective *passerelle* clauses.

As mentioned above, one of the key reasons behind foreign policy disagreements at EU level is the lack of a common strategic culture and diverging national interests. While many threats facing the EU tend to be common to all Member States, the landscape in the EU is better characterised as a ['mosaic](#) of various national strategic cultures' marked by diverse geopolitical interests and historical experiences. Having a common outlook among Member States 'is [essential](#) to conducting foreign policy' and to enhance collective [resilience](#) when facing security threats. Recognising the importance of addressing these aspects at the EU level, the Member States have launched a strategic reflection on security and defence in the form of a **strategic compass**. Having officially begun under the German Presidency of the Council of the EU in July 2020, the [strategic compass](#) will result in a new security policy document which will map threats, challenges and EU objectives across [four 'baskets'](#): crisis management, partnerships, resilience, and capability development. The first stage of the process was completed in November 2020 and represented a 360-degree, intelligence-based [analysis of the threats](#) the EU is facing and will face in the next 10 years. The threat analysis shows that strengthening the EU's security and defence policy 'is not a luxury, but highly necessary'. The next phase of the strategic compass is a strategic dialogue between Member States and the EU institutions to start in 2021, while the whole process should be finalised in early 2022.

Taking forward the strategic direction provided by both President von der Leyen and her predecessor, as shown in the first section, the European Commission [proposed](#) an **EU action plan for human rights and democracy** in March 2020. Aiming to reaffirm the European Union's 'commitment to promoting and protecting' such values globally while responding to new geopolitical challenges, the Commission and the HR/VP jointly recommend that after the European Council sets strategic objectives, the [Council of the EU would implement](#) these objectives through decisions reached by QMV. The proposal sees it as in the EU's 'strategic interests' to 'take global leadership on human rights and democracy'. While the action plan was [approved](#) by the Council in November 2020, the question of moving to QMV has not yet been agreed by the Member States.

The first concrete deliverable of the action plan is an EU framework for human rights sanctions – the [European Magnitsky Act](#). Adopted on 7 December 2020, this [regime](#) allows the EU to target human rights violations worldwide, including genocide or torture. As President von der Leyen voiced her support for using QMV in applying sanctions, this aspect was part of the negotiations for the human rights sanctions regime. However, the regime in the end will follow the standard model for adopting EU restrictive measures, namely through a unanimous decision of the Council based on proposals made by Member States or the HR/VP.

Finally, the HR/VP has [suggested](#) the forthcoming [Conference on the Future of Europe](#) might be a suitable platform to 'debate the pros and cons of these options', keeping in mind the urgency for a stronger EU capacity to act.

## European Parliament position

The European Parliament has been consistent in its support for greater use of QMV in certain areas of foreign policy. Back in 2013, Parliament [recommended](#) taking advantage of the review of the functioning of the EEAS to explore possibilities for broadening the use of QMV in CFSP matters 'by means of the respective *passerelle* clause'. In February 2019, Parliament [advocated](#) using QMV 'in all areas where this is possible ... by using the various *passerelle* clauses'. The same resolution welcomed President Juncker's proposals for using QMV 'given the importance of speeding up decision-making and making it more effective, and the need for the Union to speak more with one voice'. In the area of human rights violations, the [resolution](#) of 14 March 2019 urged the Council to adopt an instrument allowing human rights sanctions to be adopted by QMV. The European Parliament's 2020 annual report on the [implementation of the CFSP](#) argued that QMV 'would make the EU's foreign and security policy more effective', and called on the Council 'to take up this

initiative by making use of the '*passerelle* clause' contained in Article 31(3) of the TEU'. In its 2020 annual report on the [implementation of the CSDP](#), Parliament noted that the EU 'has been slow to react and adapt' to its new security environment, and asked the European Council to prioritise using QMV in the CSDP in the Council. The 25 November 2020 resolution on the [foreign policy consequences of the Covid-19 outbreak](#) also notes that a change in voting procedures in foreign policy would render it 'more effective, more proactive and better suited to responding swiftly to emergencies'. The resolution calls on the Council or the European Council to answer calls made by Parliament and the Commission to move to QMV, by activating the *passerelle* clause regarding human rights and sanctions, at the minimum.

## MAIN REFERENCES

Bassot É., [Unlocking the potential of the EU Treaties](#), EPRS, European Parliament, May 2020.

Kotanidis S., [Passerelle clauses in the EU Treaties: Opportunities for more flexible and supranational decision-making](#), EPRS, European Parliament, December 2020.

## ENDNOTES

- <sup>1</sup> It is important to distinguish between unanimity and consensus. While the former requires all parties to agree based on an expressed position, the latter may mean that none of the parties strongly disagree.
- <sup>2</sup> For a detailed analysis of *passerelle* clauses in the Lisbon Treaty read S. Kotanidis, [Passerelle clauses in the EU Treaties: Opportunities for more flexible and supranational decision-making](#), EPRS, 2020.
- <sup>3</sup> Beyond the two general *passerelle* clauses contained in Article 48(7) TEU, the Treaties provide for six specific *passerelle* clauses (Article 31(3) TEU, Article 81(3)(2) TFEU, Article 153(2) TFEU, Article 192(2)(2) TFEU, Article 312(2)(2) TFEU) and Article 333 TFEU).
- <sup>4</sup> Starting at minute 01:13:00.

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