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A9-0208/2023

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REPORT

on the implementation of the *passerelle* clauses in the EU Treaties
(2022/2142(INI))

Committee on Constitutional Affairs

Rapporteur: Giuliano Pisapia

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

In addressing certain challenges, the European Union has demonstrated its ability to act promptly and decisively. However, on numerous occasions over the years, the Union's response has been slowed down or blocked by its decision-making rules.

In particular, the unanimity requirement in the Council represents one of the biggest impediments to the EU's capacity to act rapidly and effectively. Originally conceived to allow governments to protect legitimate national interests on sensitive issues, the right to veto has increasingly become a tool used to gain leverage and receive concessions on other issues.

Instead of fostering a culture of discussions and compromises, unanimity has blocked or delayed solutions that often reflect a watered-down compromise. In the past years, for example, in the field of the EU's Common Foreign and Security Policy (CFSP) alone, the right of veto was used in several occasion to blocked or delay important decisions.¹

Changing the Treaties

It is therefore unsurprising that the Conference on the Future of Europe concluded that “all issues decided by way of unanimity should be decided by way of a qualified majority.”² Precisely in order to give an adequate follow-up to the conclusions of the Conference on the Future of Europe, the Parliament has called for the Treaties to be urgently amended to make sure the EU has the competences and tools to act more quickly and effectively.³

However, Treaty changes, if approved, would require time before coming into force. Therefore, in the meantime, all available tools within the existing Treaties should be used to improve the speed and quality of EU decision-making. The objectives of using the current Treaties to the fullest extent and amending the Treaties themselves are not mutually exclusive, but rather should be seen as two parallel tracks in a broader process of institutional reforms.

Using the Treaties to the fullest extent

The passerelle clauses are one of the instruments in the Treaties whose potential is yet to be untapped. Whilst they do not change the EU's competences, for which Treaty changes are required, passerelle clauses can be activated immediately and allow specific changes in EU decision-making procedures. Specifically, they allow a move from unanimity to qualified majority voting and/or a shift from a special to the ordinary legislative procedure.

Despite numerous calls and proposals from both Parliament and the Commission, passerelle clauses have never been activated since the entry into force of the Lisbon Treaty. One of the main reasons is that the activation of passerelle clauses always requires unanimity in the Council or the European Council. This seemingly self-contradictory requirement of ‘using unanimity to overcome unanimity’, which should be addressed when amending the Treaties, makes the activation of passerelle clauses very difficult and entirely reliant on the political will of the Council. It is precisely the lack of sufficient political will that has led these

¹ EPRS Study “The implementation of Article 31 of the Treaty on European Union and the use of Qualified Majority Voting”, November 2022.

² COFOE Conclusions, proposal 39.

³ European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties.

instruments in the Treaties to be overlooked.

Yet, passerelle clauses have in fact already been used once in 2004 to move from unanimity to qualified majority and co-decision in specific policies in the field of visas, asylum, immigration, and free movement of persons. Whilst the decision predates the entry into force of the Lisbon Treaty, it is remarkable that such an activation was approved in an important area where today the Council struggles to find consensus and blocks ambitious EU action.

Besides calling for using the passerelle clauses, the Parliament and Commission have asked Member States to use another instruments in the Treaties, such as constructive abstention in the field of CFSP. This instrument, which had only been invoked once in 2008, was used in 2022 by four Member States with regards to two decisions related to the EU's response to Russia's war of aggression in Ukraine. This highlights how, when pushed by the urgency to respond to pressing issues, Member States are able to find ways within the current Treaties to effectively overcome unanimity and allow the Union to act rapidly and effectively.

Moving forward: gradual activation of passerelle clauses

Recently, in the context of the follow up to the conclusions of the Conference on the Future of Europe, the Council has held the first substantive discussions in years on the possible activation of passerelle clauses. Whilst a majority of Member States have expressed their willingness to use passerelle clauses in certain fields and on a case-by-case basis, regrettably no formal decision on their activation has yet been taken.

In order to build mutual trust between Member States and EU institutions, the Rapporteur proposes a gradual time-sequenced approval of passerelle clauses, identifying specific areas in which their activation represents an added value and would make the EU able to act more rapidly and effectively.

Starting with commonly defined priority areas that require urgent action by the Union, the activation of passerelle clauses could be gradually extended to several key policy fields, such as CFSP, environment, energy, and taxation.

The recent discussions in the Council represent an important opening that should be matched by the Parliament and Commission with a renewed interest to engage in discussions with Member States on institutional reforms. The Rapporteur, on behalf of the Parliament, stands ready to cooperate with the other institutions on the matter. However, political will and openness to change in the Council are preconditions for a meaningful exchange to occur.

Over a year after the end of the Conference on the Future of Europe, it is high time that the institutions give a sign to citizens that their contributions did contribute to effectively change decision-making in the EU. The activation of passerelle clauses offer an opportunity precisely to take a small, yet important, step in that direction.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the *passerelle* clauses in the EU Treaties (2022/2142(INI))

The European Parliament,

- having regard to the *passerelle* clauses in the EU Treaties,
- having regard to Articles 31(3) and 48(7) of the Treaty on European Union (TEU) and Articles 81(3)(2), 153(2), 192(2)(2), 312(2)(2) and 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 Treaty¹,
- having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union²,
- having regard to its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties³,
- 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,

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.

- 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;
- 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 Union⁴, 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

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).

move from unanimity to QMV⁵; 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 persons⁶; 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 EU⁷;
- 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;

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

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.

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 urgently⁸; 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; reiterates⁹, 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 Commission¹⁰ 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 that moving from unanimity to QMV on certain tax matters would contribute to a more effective and consistent framework for collecting taxes, tackling tax evasion and avoidance and addressing fraud concerns; underlines the fact that the *passerelle* clauses have never been used in the area of taxation; reiterates its call¹¹ on the Commission to relaunch the discussion on the use of QMV for some tax matters

¹⁰ COM(2018)0647.

¹¹ European Parliament resolution of 6 July 2022 on national vetoes to undermine the global tax deal (OJ C 47, 7.2.2023, p. 198).

through a phased approach, as a follow-up to its 2019 communication on the issue¹² ;

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 resolutions¹³;

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;
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)(2) TFEU);

Enhanced cooperation

24. Reiterates its commitment¹⁴ 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

¹² COM(2019)0008.

¹³ European Parliament resolution of 28 November 2019 on the climate and environment emergency (OJ C 232, 16.6.2021, p. 28).

¹⁴ OJ C 252, 18.7.2018, p. 215.

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)(2) 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)(2) 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 (Articles 42(4) and 43 TEU) are taken by QMV;
- 31. Calls on the European Council to activate the general *passerelle* clauses to switch to QMV and OLP for selected Treaty articles concerning the EU's competences in the area of taxation, including for policies related to largely harmonised tax policies and acts related to previously agreed on international agreements;
- 32. 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)

33. 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;
34. Reiterate its call on the European Council¹⁵ to activate the sector-specific *passerelle* clause provided for in Article 312(2)(2) TFEU in order to allow the Council to adopt the next MFF through QMV instead of unanimity;
35. 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;
36. 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;
37. Invites the Council and the Commission to engage in discussions with Parliament in line with the timeline above;

◦

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

¹⁵ European Parliament resolution of 14 November 2018 entitled ‘Multiannual Financial Framework 2021-2027 — Parliament’s position with a view to an agreement’ (OJ C 363, 28.10.2020, p. 179).

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Constitutional Affairs

on the implementation of *passerelle* clauses in the EU Treaties
(2022/2142(INI))

Rapporteur for opinion: Tineke Strik

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas a growing number of threats, including Russia's war of aggression against Ukraine, the continued rise of authoritarianism worldwide, the assertive foreign policy of the People's Republic of China, the climate emergency and the impact of the COVID-19 pandemic, are profoundly reshaping the EU's immediate geopolitical environment and are urging it to play a stronger and more coherent role in the international arena; whereas in the light of a possible future enlargement of the Union, internal reform and the abolition of unanimity becomes even more pressing; whereas the present de facto requirement of Council unanimity in all matters under Title V of the Treaty on European Union (TEU) is one of the major shortcomings of the EU, affecting its ability to act and making it unfit to tackle many of today's challenges; whereas a reform of the EU's decision-making processes should therefore be a priority for Member States in order to ensure that the EU is able to react more swiftly to the proliferation of new and emerging challenges;
- B. whereas the potential for fast, efficient and effective foreign policy, security and defence action, as set out in particular in Articles 48(7) and 31(3) TEU, has yet to be realised owing to the lack of common threat perception and of a culture of strategic cooperation and political will from the Member States;
- C. whereas *passerelle* clauses, activated by unanimous vote of the Council or European Council, could be used to immediately switch from the requirement of unanimity to qualified majority voting (QMV) in specific policy areas, with the exception of decisions with military implications or those in the area of defence, which would immediately enhance the efficiency of decision-making in the field of the EU's common foreign and security policy (CFSP); whereas doing so would allow the EU to respond more swiftly and decisively to the dramatic change to the European security environment as a result of Russia's war of aggression against Ukraine; whereas the use of QMV could also shield the EU from third-country pressure and divide-and-rule tactics;
- D. whereas the Conference on the Future of Europe showed that citizens want more efficient decision-making in the field of foreign and security policy through the use of

QMV instead of unanimity;

- E. whereas the Czech Presidency of the Council sent a letter to the Member States with a list of specific policy areas that could be switched to QMV;
 - F. whereas the Czech Presidency listed 11 concrete actions in foreign affairs and the Common Security and Defence Policy (CSDP) related to the Articles 24, 27, 28, 29, 37, 39, 41, 42, and 44 TEU;
1. Deplores the fact that *passerelle* clauses have never been used in the field of the CFSP owing to Member States' lack of political will and contrary to Parliament's clear position on the matter and the recommendations of citizens in the context of the Conference on the Future of Europe; takes the view that emerging global challenges and the Union's immediate geopolitical environment and security instability, notably due to Russia's war of aggression against Ukraine, clearly require the EU to adopt swifter and more efficient decision-making processes;
 2. Strongly believes that the Council's unanimity-based decision-making process in matters falling under Title V TEU is deeply inadequate to effectively respond to emerging international challenges and crises and shape the EU's pro-active and decisive external action on the global stage; acknowledges that *passerelle* clauses could improve the efficiency of the EU's decision-making if activated; is of the opinion, however, that *passerelle* clauses have considerable flaws stemming from the requirement of unanimity for their activation, and that Treaty change is therefore necessary; calls on the Member States to demonstrate the political will to limit the use of unanimity by using *passerelle* clauses as well as to overcome the practice of imposing vetoes on matters related to the Union's external action for the purposes of obtaining concessions in unrelated policy areas;
 3. Urges the Swedish and upcoming Spanish and Belgian Council Presidencies to follow up on the initiative of the Czech Council Presidency in an effective way, starting by adding the use of *passerelle* clauses in specific areas in the field of the CFSP and relevant Commission external action to the agenda of the first Council meeting following the adoption of the present report, and to decide on its activation without delay and by no later than the end of this parliamentary term;
 4. Recalls that Article 48(7) and Article 31(3) TEU contain *passerelle* clauses that can enable the switch from unanimity to QMV in areas that fall under Title V TEU; calls on the Member States to make full use of *passerelle* clauses, in particular that contained in Article 31(3) TEU, without further delay, especially in priority areas;
 5. Urges the Member States to continue working on building their common threat perception and a culture of strategic cooperation, alongside political will, and to switch to QMV as a matter of priority for decisions in certain areas of the CFSP and relevant Commission areas of external action, starting within a year, by activating the *passerelle* clauses for priority areas; insists that these priority areas include all decision-making regarding the Union's sanctions regimes, notably the EU Global Human Rights Sanctions Regime as well as any measures related to Russia's war of aggression against Ukraine, including restrictive measures, defence assistance, and financial and economic support and interim steps in the EU accession process; urges Member States to give

consideration to switching to QMV for some Council decisions pertaining to the CSDP, with the exception of the mutual defence clause in Article 42(7) TEU, and for the creation and deployment of military missions under the CSDP that do not involve an executive mandate;

6. Urges the Council to make greater use of the flexibility provided for in Article 31(2) TEU; calls on the European Council to explore the adoption of a greater number of decisions related to the CFSP and relevant Commission external action, in line with the Union's strategic interests and objectives under Article 22(1) TEU, both those concerning EU relations with a specific country or region and those of a thematic nature, and thereby to enable qualified majority voting under Article 31(2) TEU;
7. Invites the Member States, where appropriate, to make greater use of enhanced cooperation in the fields of CFSP and relevant Commission external action and to consider the adoption of decisions in line with the provisions for qualified majority voting set out in Articles 330 and 333(1) of the Treaty on the Functioning of the European Union (TFEU);
8. Insists that any activation and implementation of *passerelle* clauses regarding Title V TEU must not delay nor form a pretext for any lack of political will to facilitate, the convening of a convention by activating the procedure for revising the Treaties provided for in Article 48 TEU, with the objective, inter alia, of enshrining QMV for all matters relating to the CFSP and relevant Commission areas of external action in the Treaties;
9. Reiterates the need for strong parliamentary oversight of the CFSP, CSDP and Commission external action to ensure accountability and democratic legitimacy; calls on the Council, the Commission and the European External Action Service to proactively engage with Parliament and keep it informed; commits itself to improving the efficiency of its oversight mechanisms, in particular where doing so could contribute to speeding up decision-making within the Council;
10. Reiterates that pending the activation of *passerelle* clauses and the full application of QMV in areas of the CFSP and relevant Commission areas of external action, the option for constructive abstention enshrined in Article 31 TEU should be used more often to overcome potential deadlocks imposed by Member States;
11. Calls for *passerelle* clauses to be used also for those areas where responsibilities have been conferred upon the EU.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	22.3.2023
Result of final vote	<div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; margin-right: 10px;">+:</div> <div>48</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; margin-right: 10px;">-:</div> <div>10</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; margin-right: 10px;">0:</div> <div>2</div> </div>
Members present for the final vote	<p>Alviina Alametsä, Alexander Alexandrov Yordanov, François Alfonsi, Maria Arena, Petras Auštrevičius, Traian Băsescu, Włodzimierz Cimoszewicz, Michael Gahler, Kinga Gál, Klemen Grošelj, Bernard Guetta, Sandra Kalniete, Dietmar Köster, Andrius Kubilius, Ilhan Kyuchyuk, David Lega, Miriam Lexmann, Leopoldo López Gil, Antonio López-Istúriz White, Lukas Mandl, Pedro Marques, Fulvio Martusciello, David McAllister, Vangelis Meimarakis, Sven Mikser, Francisco José Millán Mon, Matjaž Nemec, Gheorghe-Vlad Nistor, Demetris Papadakis, Kostas Papadakis, Tonino Picula, Manu Pineda, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos, Mounir Satouri, Jordi Solé, Sergei Stanishev, Tineke Strik, Hermann Tertsch, Dragoș Tudorache, Thomas Waitz, Charlie Weimers, Isabel Wiseler-Lima, Salima Yenbou, Bernhard Zimniok, Željana Zovko</p>
Substitutes present for the final vote	<p>Engin Eroglu, Georgios Kyrtos, Sergey Lagodinsky, Erik Marquardt, Pina Picierno, Mick Wallace, Elena Yoncheva, Javier Zarzalejos, Milan Zver</p>
Substitutes under Rule 209(7) present for the final vote	<p>Annika Bruna, Clare Daly, Margarida Marques, Javier Moreno Sánchez</p>

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

48	+
PPE	Alexander Alexandrov Yordanov, Traian Băsescu, Michael Gahler, Sandra Kalniete, Andrius Kubilius, David Lega, Leopoldo López Gil, Antonio López-Istúriz White, David McAllister, Lukas Mandl, Fulvio Martusciello, Vangelis Meimarakis, Francisco José Millán Mon, Gheorghe-Vlad Nistor, Isabel Wiseler-Lima, Javier Zarzalejos, Željana Zovko, Milan Zver
Renew	Petras Auštrevičius, Engin Eroglu, Klemen Grošelj, Bernard Guetta, Georgios Kyrtos, Ilhan Kyuchyuk, Dragoș Tudorache, Salima Yenbou
S&D	Maria Arena, Włodzimierz Cimoszewicz, Dietmar Köster, Margarida Marques, Pedro Marques, Sven Mikser, Javier Moreno Sánchez, Matjaž Nemec, Demetris Papadakis, Pina Picierno, Tonino Picula, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos
Verts/ALE	Alviina Alametsä, François Alfonsi, Sergey Lagodinsky, Erik Marquardt, Mounir Satouri, Jordi Solé, Tineke Strik, Thomas Waitz

10	-
ECR	Hermann Tertsch, Charlie Weimers
ID	Annika Bruna, Bernhard Zimniok
NI	Kinga Gál, Kostas Papadakis
PPE	Miriam Lexmann
The Left	Clare Daly, Manu Pineda, Mick Wallace

2	0
S&D	Sergei Stanishev, Elena Yoncheva

Key to symbols:

+ : in favour

- : against

0 : abstention

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on the implementation of *passerelle* clauses in the EU Treaties
(2022/2142(INI))

Rapporteur for opinion: Gilles Boyer

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes the ongoing trend in which the number of policy areas falling under unanimity voting in Council is being reduced; takes note that, in this regard, taxation has not yet become part of this trend; stresses that it has become increasingly evident in recent years that stronger coordination in the field of taxation is needed at the EU and global levels in the light of economic developments and the new challenges created by digitalisation and globalisation; recalls that recent tax proposals have been blocked in Council owing to vetoes by individual Member States for reasons unrelated to the content of the proposals; deplores the recourse to national vetoes as a bargaining tool;
2. Reminds the Member States that unanimity as it appears in the Treaties must be counterbalanced by a high level of responsibility and must be in line with the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union;
3. Stresses that unanimity voting in Council on tax policy does not facilitate the changes needed to tackle the current challenges; regrets the fact that the current situation often leads to delays and a lack of progress in the harmonisation and coordination of tax rules across the Union and in the fight against tax evasion and tax avoidance, even though such harmonisation and coordination would benefit the single market and the Union's progress in reaching its economic, green, social and digital objectives; notes, in this regard, that some legislative proposals on tax matters will be key to supporting the competitiveness of European companies;
4. Recalls that Article 48(7) of the Treaty on European Union provides for two general *passerelle* clauses that allow the decision-making procedures to be changed in order to adopt measures in Council through qualified majority voting in areas that are currently subject to unanimity or in order to use the ordinary legislative procedure in areas that are currently subject to special legislative procedures; regrets the fact that these *passerelle* clauses have never been used; recalls that activating the *passerelle* clauses would, in any case, require unanimity in the European Council and Parliament's consent;

5. Calls on the Council to consider using the two general *passerelle* clauses for selected Treaty articles concerning the EU's competences in the area of taxation; believes that the recourse to *passerelle* clauses could help reduce the negative interference of vetoes used solely as bargaining tools; reiterates its call on the Commission in its resolution of 6 July 2022 on national vetoes to undermine the global tax deal¹ to relaunch the discussion on the use of qualified majority voting for some tax matters through a phased approach, as a follow-up to the Commission communication of 15 January 2019 entitled 'Towards a more efficient and democratic decision making in EU tax policy'², and as a response to the outcome of the Conference on the Future of Europe.

¹ OJ C 47, 7.2.2023, p. 198.

² (COM(2019)0008).

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	1.3.2023
Result of final vote	+: 34 -: 17 0: 8
Members present for the final vote	Rasmus Andresen, Anna-Michelle Asimakopoulou, Manon Aubry, Gunnar Beck, Isabel Benjumea Benjumea, Stefan Berger, Gilles Boyer, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Valentino Grant, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, France Jamet, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtos, Aurore Lalucq, Aušra Maldeikienė, Siegfried Mureşan, Denis Nesci, Luděk Niedermayer, Piernicola Pedicini, Lídia Pereira, Kira Marie Peter-Hansen, Eva Maria Poptcheva, Evelyn Regner, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Ernest Urtasun, Johan Van Overtveldt, Stéphanie Yon-Courtin, Roberts Zīle
Substitutes present for the final vote	Marc Angel, Nicola Beer, Karima Delli, Herbert Dorfmann, Gianna Gancia, Eider Gardiazabal Rubial, Elisabetta Gualmini, Valérie Hayer, Chris MacManus, Fulvio Martusciello, Jessica Polfjärd, Clara Ponsatí Obiols, René Repasi
Substitutes under Rule 209(7) present for the final vote	Joachim Kuhs, Alessandro Panza

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

34	+
NI	Clara Ponsatí Obiols
PPE	Herbert Dorfmann, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Aušra Maldeikienė, Fulvio Martusciello, Siegfried Mureşan, Luděk Niedermayer
Renew	Gilles Boyer, Giuseppe Ferrandino, Valérie Hayer, Georgios Kyrtos, Eva Maria Poptcheva, Stéphanie Yon-Courtin
S&D	Marc Angel, Jonás Fernández, Eider Gardiazabal Rubial, Elisabetta Gualmini, Eero Heinäluoma, Aurore Lalucq, Evelyn Regner, René Repasi, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli
The Left	Manon Aubry, José Gusmão
Verts/ALE	Rasmus Andresen, Karima Delli, Claude Gruffat, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun

17	-
ECR	Michiel Hoogeveen, Denis Nesci, Dorien Rookmaker, Johan Van Overtveldt, Roberts Zīle
ID	Gunnar Beck, Gianna Gancia, Valentino Grant, France Jamet, Joachim Kuhs, Alessandro Panza
NI	Enikő Győri
PPE	Isabel Benjumea Benjumea, Frances Fitzgerald, Lídia Pereira, Jessica Polfjård
The Left	Chris MacManus

8	0
PPE	Anna-Michelle Asimakopoulou, Stefan Berger, Markus Ferber, Ralf Seekatz
Renew	Nicola Beer, Billy Kelleher, Ondřej Kovařík
S&D	Alfred Sant

Key to symbols:

+ : in favour

- : against

0 : abstention

27.2.2023

LETTER OF THE COMMITTEE ON BUDGETS

Mr Salvatore De Meo
Chair
Committee on Constitutional Affairs
BRUSSELS

Subject: Opinion on the ‘Implementation of the “passerelle” clauses in the EU Treaties
(2022/2142(INI))

Dear Chair,

At their meeting of 12 July 2022, the Committee on Budgets’ Coordinators decided to adopt an opinion in the form of a letter on the above-mentioned report. At their meeting of 27-28 March, BUDG Members mandated me to convey the suggestions set out below.

Yours sincerely,

Johan Van Overtveldt

SUGGESTIONS

- A. whereas Article 48 of the Treaty on European Union (TEU) provides for general passerelle clauses enabling the European Council to authorise the Council to act by qualified majority where it would ordinarily act by unanimity and enabling the European Council to authorise the Council to adopt acts using the ordinary legislative procedure where they would otherwise be adopted by the special procedure; whereas, in both instances, the European Council acts unanimously and must obtain the consent of the European Parliament;
- B. whereas, under Article 353 of the Treaty on the Functioning of the European Union (TFEU), the above-mentioned general passerelle clauses do not apply to the adoption of the regulation establishing the multiannual financial framework (MFF) or of the Own Resources Decision, both of which require unanimity within Council and the former also the consent of Parliament;
- C. whereas the second sub-paragraph of Article 312(2) provides for a specific passerelle clause enabling the European Council to authorise the Council to adopt the MFF regulation by qualified majority;
- D. whereas, following the conclusions of the Conference on the Future of Europe of 9 May 2022, Parliament submitted to the Council proposals for the amendment of the Treaties under the ordinary revision procedure laid down in Article 48 TEU, including in order to provide Parliament with full co-decision rights on the EU budget;
 - 1. Underlines that the unanimity requirement in Council for the adoption of the MFF Regulation impedes and slows down the decision-making process, can lead to sub-optimal outcomes and can engender a reluctance to amend the regulation even where there is an incontrovertible case for revision;
 - 2. Regrets, therefore, that, despite repeated calls from Parliament, the European Council has so far refrained from activating the passerelle clause in Article 312(2) TFEU to allow for adoption of the MFF Regulation by qualified majority; reiterates its call for an ambitious revision of the current MFF and urges the European Council to activate the passerelle clause for the adoption of the revised regulation;
 - 3. Considers, at the same time, that the logic underpinning the passerelle clauses, whereby unanimity is required to shift to qualified majority, is inherently flawed and makes their activation highly unlikely, a view borne out by the evidence to date;
 - 4. Points out that the current rules governing the adoption of the MFF Regulation and the Own Resources Decision not only pose a problem in terms of effective decision-making in Council, but also fail to ensure the necessary parliamentary accountability;
 - 5. Reiterates its call, therefore, for amendments to the Treaties with respect to decision-making on the EU budget, such as to render the use of passerelle clauses unnecessary; calls, in particular, for Article 312(2) TFEU and Article 311 TFEU to be amended so that the regulation laying down the multiannual financial framework and the decision laying down the provisions relating to the system of own resources of the Union and the implementing measures for that system are adopted in accordance with the ordinary

legislative procedure;

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	24.5.2023
Result of final vote	+ : 18 - : 7 0 : 0
Members present for the final vote	Gerolf Annemans, Włodzimierz Cimoszewicz, Salvatore De Meo, Brice Hortefeux, Max Orville, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Sven Simon, László Trócsányi, Rainer Wieland
Substitutes present for the final vote	François Alfonsi, Gunnar Beck, Vladimír Bilčík, Pascal Durand, Markéta Gregorová, Seán Kelly, Alin Mituța, Niklas Nienaaß, Maite Pagazaurtundúa
Substitutes under Rule 209(7) present for the final vote	Mercedes Bresso, Stéphanie Yon-Courtin

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

18	+
PPE	Vladimír Bilčík, Salvatore De Meo, Seán Kelly, Sven Simon, Rainer Wieland
Renew	Alin Mituța, Max Orville, Maite Pagazaurtundúa, Stéphanie Yon-Courtin
S&D	Mercedes Bresso, Włodzimierz Cimoszewicz, Pascal Durand, Giuliano Pisapia, Pedro Silva Pereira
The Left	Helmut Scholz
Verts/ALE	François Alfonsi, Markéta Gregorová, Niklas Nienäb

7	-
ECR	Jacek Saryusz-Wolski
ID	Gerolf Annemans, Gunnar Beck, Antonio Maria Rinaldi
NI	László Trócsányi
PPE	Brice Hortefeux, Paulo Rangel

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention