



8.11.2022

## **WORKING DOCUMENT**

on on the Implementation of the “passerelle” clauses in the EU Treaties  
[2022/2142(INI)]

Committee on Constitutional Affairs

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The present document is meant to serve as a basis for a first exchange of views in the Committee for Constitutional Affairs on 8 November 2022 on the upcoming implementation report on the “Implementation ‘passerelle’ clauses in the EU Treaties” [2022/2142(INI)].

## **The current political context**

In addressing the multiple challenges it currently faces, from the effects of the COVID-19 pandemic to the socioeconomic consequences of Russia’s war of aggression against Ukraine, the European Union has demonstrated its ability to act promptly and decisively.

However, on numerous occasions over the past years, the Union’s response has at times been slow and less effective due to problems related to its decision-making rules. It is for this reason that the Conference on the Future of Europe (COFOE), as well as the Parliament on numerous occasions, has called for a stronger and more efficient Union.

Such a call, however, entails that also more competences in certain areas be given to the Union. “Passerelle” clauses, by definition, cannot address this point. Only a procedure of revision of the Treaties can constitute a basis for extending Union competences. The Parliament, in its Resolution of 9 June 2022<sup>1</sup>, has called for a Convention in view of modifying Treaties through the ordinary procedure.

The Parliament should also advance proposals to improve the efficiency of the EU’s decision-making, allowing the Union to act more swiftly within the remit of its existing competences. In that regard, one of the main requests in the conclusions of the COFOE is to move from unanimity voting to qualified-majority voting (QMV) in the Council. The existing Treaties provide for that possibility, precisely with the use of the “passerelle” clauses.

## **“Passerelle” clauses in a nutshell**

“Passerelle” clauses modify the decision-making rules that affect acts of the Council of the Union. They allow a shift from unanimity to QMV, or a shift from a special legislative procedure (SLP) to the ordinary legislative procedure (OLP). “Passerelle” clauses thus aim at improving and accelerating the decision-making process of the Union, by fostering compromises, overcoming vetoes and enhancing the role of the Parliament.

The current Treaties provide for two kinds of “passerelle” clauses: two general clauses established by the Lisbon Treaty and six sector-specific clauses (two of which predate the Lisbon Treaty). A table summarising the “passerelle” clauses is to be found in the Annex.

The two general “passerelle” clauses are enshrined in Article 48(7) of the TEU. They allow for changes in one direction<sup>2</sup>: from unanimity voting to QMV in the Council (Article 48(7)(1) TEU), and from a SLP to the OLP (Article 48(7)(2) TEU). The first applies to the entire TFEU and Title V of the TEU (i.e. Union external action and specific provisions of the

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<sup>1</sup> European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties (2022/2705(RSP)), point 7.

<sup>2</sup> For modifications in the opposite direction, Treaty changes are required.

CFSP) for the switch to QMV, with the exclusion of decisions with military implications. The second applies where the TFEU provides that legislative acts are adopted by the Council according to a SLP. Article 353 TFEU further limits the scope of the general “passerelle” clauses by excluding their application in a number of cases, i.e. decisions on the Union’s own resources, on the adoption of the Multiannual Financial Framework (MFF), on the so called ‘flexibility clause’ (Article 352 TFEU) and on the vote of Member States under Article 7 TEU.

For activating both general “passerelle” clauses, the unanimous approval of the European Council and the consent of Parliament by a majority of its Members is needed. Moreover, any national Parliament has a veto right which can be used within six months after the notification of the European Council.

The six sector-specific “passerelle” clauses aim at modifying decision-making in the same way that general “passerelle” clauses do, but only in certain delimited areas. They apply in the fields of (i) the CFSP<sup>3</sup>, (ii) family law with cross-border implications<sup>4</sup>, (iii) social policy<sup>5</sup>, (iv) environmental policy<sup>6</sup>, (v) the Multiannual Financial Framework (MFF)<sup>7</sup>, and (vi) enhanced cooperation<sup>8</sup>.

These specific “passerelle” clauses require a less elaborate procedure than general “passerelle” clauses for their approval and introduction. However, in the activation of all of the special “passerelle” clauses, Parliament plays a marginal role and is, at most, only consulted.

Despite offering a concrete opportunity to simplify decision-making in certain areas, the “passerelle” clauses are not a silver bullet and have some shortcomings. First, since they modify the Council’s decision-making rules, the activation of “passerelle” clauses always requires unanimity in the Council or the European Council. This might explain why, since the adoption of the Lisbon Treaty, “passerelle” clauses have never been used<sup>9</sup> despite numerous calls and proposals from both Parliament<sup>10</sup> and the Commission<sup>11</sup>. Second, as previously

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<sup>3</sup> Article 31(3) TEU

<sup>4</sup> Article 81(3) TFEU

<sup>5</sup> Article 153(2) TFEU

<sup>6</sup> Article 192(2) TFEU

<sup>7</sup> Article 312(2) TFEU, but only as the shift to MQV is concerned ; the special legislative procedure cannot be turned into the ordinary legislative procedure.

<sup>8</sup> Article 333 TFEU.

<sup>9</sup> “Passerelle” clauses have been used only once. It was in 2004 under the Treaty establishing the European Community in the field of visas, asylum, immigration and free movement of persons.

<sup>10</sup> Parliament already called on the European Council and the Council to make use of “passerelle” clauses, not only to switch to QMV in the Council, but also to involve Parliament as a co-legislator under the ordinary legislative procedure. See, for instance, resolution of 13 February 2019 on the state of the debate on the future of Europe, OJ C 449, 23.12.2020, p. 90; resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), OJ C 252, 18.7.2017, points 27, 33, 102 and 135. Not less than 40 resolutions adopted in the 7th, 8th and 9th legislative terms and mentioning or calling for the activation of “passerelle” clauses have been identified.

<sup>11</sup> The Commission presented in 2018 and 2019 four communications aimed at activating “passerelle” clauses in order to facilitate decision-making in (i) foreign policy [‘A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy’ (COM(2018)0647)], (ii) tax policy [‘Towards a more efficient and democratic decision making in EU tax policy’ (COM(2019)0008)], (iii) environmental policy [‘A more efficient and democratic decision making in EU energy and climate policy’ (COM(2019)0177)] and (iv) social policy

mentioned, “passerelle” clauses can neither extend nor modify the Union’s competences.  
**AFCO Committee’s recommendations in relation to “passerelle” clauses**

The question of “passerelle” clauses is not new to the AFCO Committee. In December 2020, the EPRS published a dedicated study on “*Passerelle* clauses in the treaties”<sup>12</sup>, and in 2021 the topic was further addressed during the discussions on the Working Documents prepared by the AFCO Committee ahead of the COFOE<sup>13</sup>.

In the ongoing discussions on the follow-up to the COFOE, the Council is currently discussing what “passerelle” clauses Member States would potentially be willing to activate, as Czech Minister for European Affairs Mikuláš Bek told the AFCO Committee at its meeting on 5 September.

The AFCO report on the “Implementation of ‘passerelle’ clauses in the Treaties” therefore comes at a timely moment. It offers an opportunity for the Parliament to present its ideas on how “passerelle” clauses can respond to some of the conclusions of the COFOE and indicate priority sectors in which it believes they should be activated.

Without prejudice to the discussions in the AFCO Committee on possible changes to the Treaties, the report should contribute to the discussions on which changes can occur within the existing Treaties.

Specifically, in preparation for the presentation and adoption of the Report on “passerelle” clauses, the discussions in the AFCO Committee could focus on the following points:

- In what specific sectors and policy areas should general and/or specific “passerelle” clauses be activated?
- How should the Report address possible amendments to the Treaties related to the “passerelle” clauses and the changes in the decision-making process they trigger?

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[‘More efficient decision making. in social policy: Identification of areas for an enhanced move to qualified majority voting’ (COM(2019)0186)]. To date, the Council has not followed-up on any of those Commission’s proposals. The 2019 mission letters for the current Commissioners for Economy, Energy and the VP/HR commit them to make full use of the clauses in the Treaties that allow proposals on taxation, energy and the CFSP to be adopted by QMV.

<sup>12</sup> ‘*Passerelle* clauses in the Treaties, Opportunities for more flexible supranational decision-making, PE 659.240, December 2020’.

<sup>13</sup> See in particular the working document on Overcoming the deadlock of unanimity voting, 28.4.2021, Rapporteur: Sandro Gozi, p. 3-4; See also the related working document on The community method and intergovernmentalism, 11.5.2021, Rapporteur: Domenec Ruiz Devesa.

**Annex: Table of “passerelle” clauses in the current Treaties**

<b>General passerelle or specific policy area</b>	<b>Material scope of application of the passerelle</b>	<b>Change in the decision-making process</b>	<b>Which institutions trigger the clause</b>	<b>Procedure necessary for the adoption of the passerelle</b>
<b>General passerelle clause</b>  <b>Art 48(7)(1) TEU</b>	Areas of TFEU and Title V of TEU (Union’s external action and CFSP)	Unanimity to QMV in the Council	European Council proposes and authorizes	<ul style="list-style-type: none"> <li>➤ European Council activates procedure</li> <li>➤ Notification to national parliaments (who can veto within 6 months)</li> <li>➤ Consensus of the EP</li> <li>➤ European Council decides by unanimity</li> </ul>
<b>General passerelle clause</b>  <b>Art 48(7)(2) TEU</b>	Where TFEU provides that legislative acts are adopted by Council under a special legislative procedure	From “special” to “ordinary” legislative procedure	European Council proposes and authorizes	<ul style="list-style-type: none"> <li>➤ European Council activates procedure</li> <li>➤ Notification to national parliaments (who can veto within 6 months)</li> <li>➤ Consensus of the EP</li> <li>➤ European Council decides by unanimity</li> </ul>
<b>Special passerelle: CFSP</b>  <b>Art 31(3) TEU</b>	Decisions under Title V, Chapter 2 of the TEU (CFSP) (except for decisions with military implications)	From unanimity to QMV in the Council	European Council proposes and authorises	<ul style="list-style-type: none"> <li>➤ Adoption by the European Council unanimously</li> </ul>
<b>Special passerelle: Family law with cross-border implications</b>  <b>Art 81(3) (2) TFEU</b>	Certain aspects of family law with cross-border implications	From “special” to “ordinary” legislative procedure	Council authorises, on a proposal from the Commission	<ul style="list-style-type: none"> <li>➤ Proposal by Commission</li> <li>➤ Unanimous adoption by the Council</li> <li>➤ Consultation of EP</li> <li>➤ Notification of the Commission proposal to national Parliaments (who have six months to oppose adoption of the passerelle clause)</li> </ul>

<b>Special passerelle:</b> <b>Social policy</b>  <b>Art 153(2) TFEU</b>	<ul style="list-style-type: none"> <li>➤ Protection of workers in the event of termination of employment contracts</li> <li>➤ Representation and collective defence of the interests of workers and employers, including co-determination</li> <li>➤ Conditions of employment for third-country nationals legally residing in the Union</li> </ul>	From “special” to “ordinary” legislative procedure	Council authorises, on a proposal from the Commission	<ul style="list-style-type: none"> <li>➤ Proposal of the Commission</li> <li>➤ Unanimous adoption by the Council</li> <li>➤ Consultation of EP</li> </ul>
<b>Special passerelle:</b> <b>Environmental policy</b>  <b>Art 192(2) (2) TFEU</b>	<ul style="list-style-type: none"> <li>➤ Provisions of fiscal nature</li> <li>➤ Measures affecting town planning, quantitative management of water resources or affecting directly or indirectly the availability of water resources</li> <li>➤ Land use, excluding waste management</li> <li>➤ Measures significantly affecting a Member State’s choice between different energy sources and the overall structure of its energy supply</li> </ul>	From “special” to “ordinary” legislative procedure	Council authorises, on a proposal from the Commission	<ul style="list-style-type: none"> <li>➤ Proposal by the Commission</li> <li>➤ Unanimous adoption by Council</li> <li>➤ Consultation of the EP, the EESC and the CoR</li> </ul>
<b>Special passerelle:</b> <b>MF</b>  <b>Art 312(2) (2) TFEU</b>	Content of the Multiannual Financial Framework Regulation	Only as far as the shift from unanimity to QMV in the Council is concerned.	European Council proposes and authorises	<ul style="list-style-type: none"> <li>➤ Endorsement by the European Council unanimously</li> </ul>

<b>Special passerelle:</b> <b>Enhanced cooperation</b>  <b>Art 333 TFEU</b>	Decisions to be taken under enhanced cooperation established where the Treaties provide for unanimity or a special legislative procedure	From unanimity to QMV and from “special” to “ordinary” legislative procedure	Member States of the Council participating in the enhanced cooperation	<ul style="list-style-type: none"> <li>➤ For the transition to QMV adoption by “Council configuration for enhanced cooperation” unanimously</li> <li>➤ For the transition to “ordinary” legislative procedure adoption by the “Council configuration for enhanced cooperation” unanimously after consulting Parliament</li> </ul>
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