



# Passerelle clauses in the EU Treaties<sup>1 2</sup>

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<sup>2</sup> Passerelle clauses are not a new feature in the EU Treaties; for the purpose of this note the notion “EU Treaties” refers to the “Treaty on the European Union (TEU)” and the “Treaty on the Functioning of the European Union (TFEU)” as provided for by the ‘Lisbon Treaty’. Thus, in principle the numbers of the Treaty articles refer to the numbers as they are in the ‘Lisbon TEU and TFEU’, unless otherwise mentioned.

## INTRODUCTION

Under the current Lisbon Treaty, decisions in certain policy fields, including some aspects of social policy<sup>3</sup>, still have to be taken by unanimity under the so-called ‘special legislative procedure’ and this thus contrary to the so-called ‘ordinary legislative procedure’ which is characterised in particular by qualified majority voting (QMV)<sup>4</sup>. Generally speaking, unanimity requirements point to politically very sensitive issues which are often related to fundamental and/or specific national interests.<sup>5</sup>

However, in some cases so-called “passerelle” clauses are foreseen which allow derogation from the legislative procedures initially provided for by the treaties. Specifically, and under certain conditions, they make it possible:

- to switch from the special legislative procedure to the ordinary legislative procedure in order to adopt an act in a given policy area;
- to switch from voting by unanimity to qualified majority voting in a given policy area.

In general, and next to other procedural requirements to be fulfilled (e.g. involvement of European Parliament, veto possibilities by national parliaments, etc.), activating a passerelle clause still depends on a decision being adopted unanimously by the Council or by the European Council. Thus, in every case, all EU countries must be in agreement before such a clause may be activated.

The Lisbon Treaty foresees in two kinds of “passerelle” clauses:

- A ‘general’ passerelle clause in article 48(7) TEU:

The so-called “general passerelle” clause in article 48(7) TEU allows the European Council to adapt, on its own initiative (so no need for a Commission proposal), the voting requirements from unanimity to QMV. However, this general passerelle possibility is subject to several restrictions:

- The application is limited to the specific provisions of the TFEU which “provide... for legislative acts to be adopted by the Council in accordance with a special legislative procedure”<sup>6</sup> and Title V of the TEU<sup>7</sup>,
- The decision has to be taken by the European Council by unanimity and obtain consent of the European Parliament,

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<sup>3</sup> See e.g. article 153§2 TFEU (also below): social security and social protection of workers, protection when an employment contract is terminated, collective representation of workers’ and employers’ interests and conditions of employment for third country nationals. But also, in article 19(2) TFEU on actions to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation; and article 21 (3) on the right of citizens of the Union to move and reside freely within the territory of the member states (social security and social protection aspects).

<sup>4</sup> In fact, through Article 16(3) TEU, QMV has become the voting rule by default as it specifies that “The Council shall act by qualified majority voting except where the Treaties provide otherwise.”

<sup>5</sup> For different reasons, this paper does not deal with any of these sensitivities but is focused at providing more in-depth information on the current legal/political framework and in particular the ETUC positions in relation to unanimity/QMC voting requirements.

<sup>6</sup> Thus it can relate to: provisions on: internal market; agriculture and fishery; free movement of persons, services and capital, security and justice; transport; competition and taxation, employment and social policy, European social funds, consumer protection, transeuropean networks, economic and territorial cohesion, research and technical development, space, environment, energy,; education, vocational training and youth; culture, public health, industry, tourism, civil protection and administrative cooperation.

<sup>7</sup> Dealing with CFSP.

- National parliaments are involved also and they have a de facto right to “veto” the decision within a six-month period<sup>8</sup>,
- The application is not permitted in respect of decisions with military implications or in the area of defence,
- following Article 353 TFEU the application of this general passerelle is also not possible in relation to “decisions on own resources [of the EU]” (article 311 paras. 1 and 4 TFEU), decisions on the adaptation of the **Multiannual Financial Frameworks** (Article 312(2) TFEU)<sup>9</sup>, decisions via the “flexibility clause” (article 352 TFEU) and on decisions on the suspension of membership rights (Article 354 TFEU)
- and it cannot lead to an extension of the competences of the Union.

General feeling/view is that due to the “double veto” (see bullet points 2 and 4 above) the added value, at least for the moment, might be limited, but it will depend on the precedents created of course.

- ‘Sectoral or specific’ passerelle clauses relating to certain policies/issues

Specific passerelle clauses in the Lisbon Treaty concern amongst others the following areas/articles; the most relevant for the trade union movement, given the current political context (see also section I. below) being:

- Article 19(2) TFEU on actions to **combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation**
- Article 21 (3) on the **right of citizens of the Union** to move and reside freely within the territory of the member states (social security and social protection aspects)
- Article 31(3) TFEU – **Common Foreign and Security Policy**
- Article 153(2), para. 4 TFEU – **Social Policy**<sup>10</sup>
- Article 192(2) TFEU: certain **environmental measures (e.g. fiscal measures, town and country planning)**
- Article 312(2) TFEU: adoption of **Multiannual Financial Framework**
- Article 333 TFEU: mechanisms for **enhanced cooperation** (again with exception of military or defence matters).

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<sup>8</sup> See Article 6 of Protocol N° 1 on the role of national parliaments in the European Union. According to CEPS, this has even more seriously reduced the potential added value of this general passerelle. (CEPS (2010), p. 181.

<sup>9</sup> However, this article contains a specific passerelle allowing the European Council to change the voting requirements in Council to QMV without the risk of this decision being vetoed by any national parliament.

<sup>10</sup> The specific passerelle clause in article 153(2) 4th sub-paragraph allows thus to move to QMV:

- Based on a proposal of the Commission and after consulting the EP,
- The decision in Council to move to QMV has however to be taken by unanimity
- Only relates to three of the four social issues currently under unanimity
  - Protection of workers where their employment contract is terminated
  - representation and collective defence of the interests of workers and employers, including co-determination,
  - conditions of employment for third-country nationals legally residing in Union territory.
- Thus leaving the issue of “social security and social protection” to unanimity (but see above IV.1. concerning the “general passerelle clause” in Article 48(7) TEU); however a passerelle clause is foreseen in relation to social security of employed and self-employed migrant workers (but which includes a special “safeguard procedure”.

# I. THE POLITICAL CONTEXT

## 1. The European Parliament

In first instance, reference should be made to a [Resolution of the European Parliament on “improving the functioning of the European Union building on the potential of the Lisbon Treaty”](#).<sup>11</sup> In this resolution, the EP:

1. Notes that **the European Union and its Member States are facing unprecedented challenges**, such as the refugee crisis, the foreign policy challenges in the immediate neighbourhood and the fight against terrorism, as well as globalisation, climate change, demographic developments, **unemployment, the causes and consequences of the financial and debt crisis, the lack of competitiveness and the social consequences in several Member States**, and the need to reinforce the EU internal market, all of which need to be more adequately addressed;

5. **Points out that not all of the provisions of the Lisbon Treaty have yet been exploited to their full potential even though they contain some necessary tools that could have been applied to prevent some of the crises with which the Union is confronted, or could be used to cope with the current challenges without having to initiate a Treaty revision in the short term;**

Furthermore, the EP in relation to:

### ***Institutional set-up, democracy and accountability***

(...)

#### **European Council**

24. **Regrets that the Council, by not using QMV, has too often referred legislative matters to the European Council**; considers that the European Council’s practise of ‘tasking the Council’ goes beyond the strategic guidelines role attributed to it by the Treaties, and **thus goes against the letter and the spirit of the Treaties**, as described in Article 15(1) TEU, which stipulates that the European Council shall define the general political directions and priorities of the Union but shall not exercise legislative functions; considers it necessary to improve the working relations between the European Council and Parliament;

27. **Calls on the European Council to make use of the ‘passerelle clause’ (Article 48(7) TEU) authorising the Council to switch from unanimity to QMV in applicable cases where the Treaties currently require unanimity;**

#### **Council**

33. **Demands that the Council switch completely to QMV wherever this is possible under the Treaties**, and that it abandon the practice of transferring contentious legislative fields to the European Council, as this goes against the letter and the spirit of the Treaty, which stipulates that the European Council can only decide unanimously, and should only do so on broad political goals, not on legislation;

#### **Commission**

41. Recalls that the **Commission, the Member States and Parliament and Council must, each within the limits of their competences, help ensure a much better application and implementation of European Union law** and of the Charter of Fundamental Rights;

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<sup>11</sup> EP Resolution of 16 February 2017, OJ C 252, p.215-234. The Resolution is based on an own-initiative report by the Committee on Constitutional Affairs with as rapporteurs MEPs Mercedes Bresso and Elmar Brok, (2014,2249(INI), A8-0386/2016, Plenary sitting of 9 January 2017).

## The social dimension

**90. Stresses that the workers' rights, particularly when they exercise their right of mobility, should be guaranteed along with their social rights, making full use of the relevant legal instruments provided for in Titles IV, IX and X of Part Three of the TFEU and according to the EU Charter of Fundamental Rights,** in order to ensure a stable social basis for the Union; points in this context in particular to the rights derived from Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Regulation (EU) No 492/2011 on freedom of movement for workers within the Union; (...)

**96. Calls for the establishment of a new social pact (which could take the form of a social protocol)** aimed at fostering Europe's social market economy and reducing inequalities, ensuring that all citizens' fundamental rights are respected, including inter alia the right to collective bargaining and freedom of movement; points out that such a pact could enhance the coordination of the social policies of the Member States;

## External action

Increasing the effectiveness, coherence and accountability of the **Common Foreign and Security Policy (CFSP)**

99. Insists on using the provisions of Article 22 TEU to set up an overall strategic framework for, and take decisions on, strategic interests and objectives laid down in Article 21 TEU, that can extend beyond the CFSP to other areas of external action, and which requires consistency with other policies such as trade, agriculture and development assistance; **recalls that decisions taken on the basis of such a strategy could be implemented by QMV**; points out that the democratic legitimacy of such decisions could be enhanced if the Council and Parliament would adopt joint strategic documents on the basis of proposals by the Vice-President of the European Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR);

**102. Calls for the use of Article 31(2) TEU, which allows the Council to take certain decisions on CFSP matters by QMV, and the 'passerelle clause' contained in Article 31(3) TEU to switch progressively to QMV for decisions in the area of the CFSP that do not have military or defence implications; (...)** therefore be used;

## 2. The European Commission

Firstly, there is that [Commission Work Programme 2018 on 'An agenda for a more united stronger and democratic Europe'](#)<sup>12</sup> which mentions:

"To be stronger, Europe also has to be more efficient. It must be able to act more quickly and decisively in a range of policy areas so that citizens and businesses benefit more immediately from EU law. **The Commission will therefore outline how the EU could make use of the so-called 'passerelle clauses' in the current Treaties which allow us to move from unanimity to qualified majority voting in certain areas** if all Heads of State or Government agree to do so. We will do this **for internal market matters, as well as for certain foreign policy decisions to ensure the Union is a strong global actor** with real weight in the world, while paying particular attention to the consistency and efficiency of these decisions.

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<sup>12</sup> European Commission (2018), COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. Commission Work Programme 2018. An agenda for a more united, stronger and more democratic Europe, COM(2017) 650 final, Strasbourg, 24.10.2017.

In the [Annex I on 'New initiatives'](#) to this Commission Work Programme 2018 is furthermore mentioned:

A Deeper and Fairer Internal Market with a Strengthened Industrial Base

**11. More efficient Single Market law-making** (initiative to be launched with a 2025 perspective) - Communication on the possibility of further enhancing the use of qualified majority voting and of the ordinary legislative procedure in internal market matters on the basis of **Article 48(7) TEU** (non-legislative, Q3 2018)

A Stronger Global Actor

**23. More efficiency and consistency in implementing the Common Foreign Policy (initiative to be launched with a 2025 perspective)** - Communication on the possibility of further enhancing the use of qualified majority voting in Common Foreign Policy, on the basis of **Article 31(3) TEU**, as well as on enhancing the consistency of the Common Foreign Policy (non-legislative, Q3 2018)

Secondly, there is [Commission President Juncker's State of the Union 2018, and in particular its Letter of intent to President Antonio Tajani and to Chancellor Sebastian Kurz](#) which mentions in its priorities 4 and 9 the following<sup>13</sup>:

To give the European Union a perspective for the future, we should prepare the Summit in Sibiu on 9 May 2019 very. (...) **we will also need the right decision-making tools for our Common Foreign and Security Policy.**

The following list sets out in detail the pending proposals which we need to adopt swiftly; and the new and complementary initiatives that are being presented together with or as a follow-up to the 2018 State of the Union Address. These are, as in the past, grouped under the 10 priorities of our joint agenda. (...)

Priority 3: A resilient Energy Union with a forward-looking climate change policy

(...)

Further initiatives to give perspective for the future of the Union

(...)

- Towards a new institutional framework for our **energy and climate policy by 2025: options for enhanced qualified majority voting** and for a possible reform of the Euratom Treaty

Priority 4: A deeper and fairer Internal Market with a strengthened industrial base

(...)

Further initiatives to give perspective for the future of the Union

- **More efficient law-making in the field of taxation: identification of areas for a move to qualified majority voting (January/February 2019).**

- **More efficient law-making in social policy: identification of areas for an enhanced use of qualified majority voting (January/February 2019).**

Priority 9: A stronger global actor

Initiatives for delivery before the European Parliament elections

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<sup>13</sup> In its "State of the Union 2018", Juncker stated the following on the matter: "This is why today the Commission is proposing to move to qualified majority voting in specific areas of our external relations. I repeat what I said last year on this matter. We should move to qualified majority voting not in all but in specific areas: human rights issues and civilian missions included. This is possible on the basis of the current Treaties and I believe the time has come to make use of this "lost treasure" of the Lisbon Treaty. I also think we should be able to decide on certain tax matters by qualified majority." (see p 11 of his speech; available at: [https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2018\\_en](https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2018_en))

- Follow-up by the European Council, the European Parliament and the Council to the Commission's initiative calling for a more efficient decision-making for the EU's Common Foreign and Security Policy (presented today (12/09/2018)).

Thirdly, there is the [Commission Work Programme 2019 "Delivering what we promised and preparing for the future"](#)<sup>14</sup>. Therein, the Commission refers amongst others to the following:

*A deeper and fairer Internal Market with a strengthened industrial base*

(...) Maintaining, enforcing and deepening the Single Market is a continuous task. We need to address remaining gaps and improve how it functions. Agreement on pending legislative files and proper implementation of regulation in Member States is therefore of utmost importance. In view of the Leaders' discussion at the December European Council, the Commission will table a Communication focusing on the elimination of remaining barriers and options for action to ensure that Europe seizes the new opportunities of a changing global environment. (...) (p. 5.)

*A stronger global actor*

When we stand together, Europe has all the weight we need to be a strong global actor, working towards peace, sustainable development, security and stability, while supporting democracy, defending human rights and promoting the rule of law. To ensure that this is the case, and alongside efforts to reach an agreement on the proposed financial programmes to underpin Europe's role as global actor, the Commission will continue to call for swift follow-up to its initiative for more efficient decision-making in the EU's Common Foreign and Security Policy. (...) (p. 8)

**III. Offering all Europeans a strong perspective for the future**

The Summit in Sibiu on 9 May 2019 will take place at a pivotal moment – six weeks after Brexit and two weeks before the European Parliament elections. This will be the moment when Leaders provide renewed confidence in the future of the new Union of 27. The Commission will contribute to the process leading up to and beyond Sibiu with a number of reports and communications with a 2025 perspective.

It has presented, or will put forward, initiatives aiming to:

(...)

- **Enhance the use of qualified majority voting and allow more efficient decision-making in key fields of taxation and social policies**, so that the EU Single Market legislation can keep pace with economic and societal developments, **as well as in several targeted areas of our external relations** to offer the right decision-making tools for our Common Foreign and Security Policy; (...)
- Pave the way for a new institutional framework for our energy and climate policy by outlining options for enhanced qualified majority voting and possible reform of the Euratom Treaty; (...) (p. 10)

More specifically in Annex 1 to the Communication entitled "New initiatives" is mentioned:

Nr.	Policy objective	Initiatives (1)
6.	Future of Energy and Climate policy	Towards a new institutional framework for our energy and climate policy by 2025: options for enhanced qualified majority voting and for a possible reform of the Euratom Treaty (non-legislative, Q1 2019)

<sup>14</sup> Comprising the following two documents: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Commission Work Programme 2019 - Delivering what we promised and preparing for the future, COM(2018) 800 final, Strasbourg, 23.10.2018; and ANNEXES to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Commission Work Programme 2019 - Delivering what we promised and preparing for the future, COM(2018) 800 final ANNEXES 1 to 5, Strasbourg, 23.10.2018.

10.	<b>More efficient Single Market law-making</b>	<b>More efficient law-making in the field of taxation: identification of areas for a move to qualified majority voting</b> (non-legislative, Q1 2019); <b>More efficient law-making in social policy: identification of areas for an enhanced move to qualified majority voting</b> (non-legislative, Q1 2019)
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(1) (...) Items highlighted in grey refer to initiatives to give perspective for the future of the Union.

In the meantime:

- the Commission launched on 12 September 2018 a Communication on [“A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy” \(COM\(2018\) 647 final\)](#) on 12 September 2018 (for more details see below IV)
- as for an enhanced move to QMV in the social policy field: a Communication is thus announced for Q1 of 2019; the Commission invited the European social partners (ETUC, BusinessEurope, UEAPME and CEEP) for an informal consultation/meeting within a “Working Group on Clauses Passarelles in Social Policy” on 31 October 2018; for the discussion note for this meeting, see appendix 1.
- as for the “more efficient law-making in field of taxation” and “enhanced qualified majority voting in relation to energy and climate”, two communications are announced in the Commission WP 2019 both for Q1 2019; it is unclear how and what kind of (informal) consultations took place already; in any case and given the close link in the SoE2018 (and CMP 2019) as well as in the statements of ETUC on all these policy areas (see below), ETUC should be involved and consulted in these initiatives as well.

### 3. The European Economic and Social Committee

Reference could be made to the recent EESC President blogpost on [“Defending the European Union and building a rEUnaissance starts at home”](#) of 12/10/2018, stating that:

**Without doubt, the existing European treaties provide unexploited opportunities, which could be used to improve all policies and thus strengthen the EU internally and externally.** The same goes for the Eurozone and the completion of the European Monetary Union. However, the institutional set up needs rebalancing.

The European Parliament must better structure its relationship with national parliaments to offset the excessive power grabbed by the European Council in these last years. **The Commission's role must be protected to enhance the communitarian approach. Qualified majority voting and the passerelle clause must be used in order to tackle challenges with prompt action.**

## II. ETUC POSITIONS

The ETUC has until now not taking a specific position on (the use of) ‘passerelle’ clauses. However, it did express itself at several occasions both in general (e.g. in relation to subsequent Treaty revisions) and/or in particular specific issue-related resolutions on the need to have more efficient decision-making procedures (including voting requirements) in and for the EU.

### 1. General positions

Looking to different ETUC positions/resolutions from 1995 till today, the ETUC has always been and is still pleading both in general as well as in relation to specific areas as follows:

- Need to move from unanimity to Qualified Majority voting (QMV) by making QMV the general rule/principle for decision-making;
- Thus applying the co-decision making procedures, and thus extending the role of and scrutiny by the EP;
- The veto right linked to unanimity voting has become an unacceptable de facto blocking factor preventing the Union in moving ahead in establishing EU provisions within its competencies;
- Keeping unanimity voting (even in very sensitive areas) thus renders the EU decision-making inefficient and in many cases even impossible; this becomes all the more problematic in the framework of past/current/future enlargement process whereby thus more states will be able to block decision within and by the EU;
- QMV should thus become the general rule in the following areas: social policy, employment strategy/policies, environment policy decisions, decisions on minimum levels for corporate, capital and environmental taxation and to allow the EU to play a better role as global actor (incl. CFSP, (im)migration/asylum policy);
- while reserving unanimity voting eventually for constitutional and quasi-constitutional issues, i.e. including amendments of the Treaty, definition of EU competencies and the inter-institutional balance or enlargement of the Union.

## 2. Examples<sup>15</sup>

Some examples (in chronological order from old to most recent):

- **ETUC Resolution on “The three challenges for the 1996 IGC: Employment, solidarity, democracy” (adopted by Executive Committee, 14-15 December 1995)**  
 “15. (...) The number of decision-making procedures needs to be reduced and the co-decision procedures involving the European Parliament needs to be extended to cover all matters where the Council currently decides by a qualified majority. **Qualified majority voting needs to become the rule for social and environmental policies.**”
- **ETUC Resolution on “Taxation in the European Union” (adopted by the Executive Committee, 10-11 October 1996)**  
 “16. Thus **with regard to taxes on interest from capital, turnover taxes and excise duties, corporation tax, and environmental taxation the ETUC believes that because of their transnational nature qualified majority voting should be introduced** at European level, and that democratic control should be ensured through the co-decision procedure between the Commission, the Council and the European Parliament.”
- **ETUC Resolution on “Amsterdam European Council” (adopted by the Executive Committee, 5-6 June 1997)**  
 “3. (...) As regards the Council decision making procedure, the ETUC maintains its demand for it to be improved by the extension of **qualified majority voting which**, together with co-decision powers by the European Parliament, **should become the general rule.**”
- **ETUC Resolution on “Ratification of the Treaty of Amsterdam” (adopted by the Executive Committee, 16-17 October 1997)**  
 “2. (...) In addition to this, the procedure of qualified majority voting has not become the general rule as regards social issues – a move supported by the ETUC, nor has this procedure been extended to other

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<sup>15</sup> Please note that below only the most relevant parts, relating to unanimity/QMV voting, are referred to. Full scanned versions of the different Resolutions could be provided if necessary and/or appropriate.

particularly significant areas such as certain aspects of the text systems. 3. (...) the Executive Committee strongly recommends that the Amsterdam Treaty be ratified. At the same time, the **ETUC would like the ratification to be accompanied by acts committing the Member States to reform the institutions before any other countries join the European Union, particularly as regards the extension of qualified majority voting** to ensure that the Institutions function efficiently and more democratically.”

- **ETUC Declaration for the Helsinki European Council (adopted by the Executive Committee, 2-3 December 1999)**

“4. (...) In general ETUC considers that the EU requires institutions, which are more efficient at decision-making, and it supports all initiatives underpinning this objective. In concrete terms, qualified majority voting within the Council of Ministers and correspondent co-decision powers of the European Parliament must be extended and **should become the general rule for social policy, the European employment strategy, environmental policy decisions and for decisions on minimum levels for corporate, capital and environment taxation.** (...)”

- **ETUC Resolution on “Reform of the Treaties” (adopted by the Executive Committee, 15-16 June 2000)**

“1. Introduction (...) putting in place more transparent, democratic and efficient decision-making procedures and institutions. This implies **making majority voting the general principle for legislative and Single Market-related issues**, and applying the co-decision procedure, thus extending the role of the European Parliament. (...)”

5. Decision-making procedures – (...) ETUC agrees with the IGC contributions submitted from the various institutions and Member States heading in the direction of **making majority voting the general principle for legislative and Single Market-related issues, while reserving unanimity voting for constitutional and quasi-constitutional issues, i.e. including amendments of the Treaty, the defining of EU competencies and the inter-institutional balance or enlargement of the Union.** It is clear that the veto right linked to the unanimity voting has become an unacceptable de facto blocking factor preventing the Union in moving ahead in establishing EU provisions within its competencies. Not least, this has become an obstacle in developing the social dimension. (...)”

- **ETUC Resolution on “The Nice European Council” (adopted by the Executive Committee, 13-14 December 2000)**

“(...) The ETUC deplores in particular the **absences of genuine progress in the area of qualified majority voting, especially with respect to social, fiscal and immigration policy.** In fact the new procedures risk making it even more difficult to obtain qualified majorities in Council of Ministers, and making it even easier to block decisions.”

- **ETUC Resolution on “A Constitutional Treaty for a Social and Citizens’ Europe. ETUC Contribution to the European Convention” (adopted by the Executive Committee, 9-10 October 2002)**

“II. EU missions and trade union key policy priority issues –

(...) A Union with a ‘European system of “industrial relations”’: (...) Consequently it must be ensured that the Treaty provisions, especially (Nice) TEC article 137, paragraph 5, do not pose an obstacle to guaranteeing the respect of fundamental trade union rights. Unless it can be proven that it is compatible in this respect, **ETUC underscores the necessity to amend the present (Nice) TEC article 137, paragraph 5, by deleting the reference to the ‘right of association’ and the ‘right to strike’.**

(...) A social Union with European Economic Governance: (...) 6. Taxation – Given the obvious role taxation plays in securing the resource base of the Member States, it will be crucial to

counter negative tax competition, which reduces the means available to Member States to pursue active policies. It is therefore **proposed to change the decision-making rule for internal market-related taxes, from unanimity to qualified majority** voting by co-decision between the Council and the EP, by introducing a new TEC article 93, para. 2 in the Treaty: *'The Council shall, be qualified majority voting and in co-decision with the EP, adopt provisions for the harmonisation of legislation concerning minimum corporate, capital and environment taxation.*

(...) **The Union as a global actor** (...) The Union's external role concerns a key future mission for the EU cooperation and it will be a focus area for "more Europe", including in terms of extended competencies. (...) It is important for all Europeans that the Member States can fulfil a role as a global player through cooperation in the EU, also in the area of foreign and security policy in respect of maintaining peace and stability, and contribute to social justice, democracy and the respect for human and trade union rights. (...) To be consistent, it will be important that the EU enhances its competencies in the field of asylum and immigration policy by including this mission on the 'community' track. ETUC is convinced that a common European immigration policy with clear rules is also the best remedy against racism and discrimination. Further to this, the EU's possibilities to act efficiently in preventing and combatting racism and xenophobia should be strengthened through the application of the principle of qualified majority voting in this area. External representation in the international trade, economic and financial for a and institutions is one of EU's core missions. (...) It will therefore be important to review and reform the treaty provisions for the external representation of the EU guided by the principle of: 'with one voice and with one mouth'. (...) Whereas the basic principles and objectives for the Union's policies in these areas should be retained, a reform will be necessary, especially with extended competencies, in terms of transparency, democratic legitimacy and accountability.

III. Treaty structure and institutional framework – (...) Instruments and decision-making procedures (...) Efficient and democratic decision-making procedures imply **making qualified majority voting the general for legislative and Single Market-related issues** and applying the co-decision making procedures, thus extending the role of the EP. This should **be the general rule for social policy, European Employment Strategy, environment policy decisions, and for decisions on minimum levels for corporate, capital and environmental taxation, while reserving unanimity voting for constitutional and quasi-constitutional issues, i.e. including amendments of the Treaty, definition of EU competencies and the inter-institutional balance or enlargement of the Union.** (...)

- **ETUC Resolution on "The European Constitution" (adopted by the Executive Committee, 13-14 October 2004)**

"Assessing the results – (...)

8. (...) A national veto in tax policy, even for the fight against cross-border fraud, was re-established.

9. The most innovative part of the new Constitution .... Generally speaking, a number of achievements were achieved:

- \* (...) the blocking capacities will be reduced by abolishing the national veto in some areas; (...)

- \* social security of migrant workers no longer requires unanimity; (...)

12. In view of the next revision of the treaties, the ETUC (...) is ready to submit concrete proposals to strengthen social Europe, transnational trade union rights, to improve the provision on economic coordination and governance, to introduce qualified majority voting in social policy and taxation, (...)

- **ETUC Strategy and Action Plan 2007-2011 (adopted by 11<sup>th</sup> ETUC Congress, Seville)**

"Effective coordination of taxation policies to avoid regime competition" (...) 16. Unfortunately, **Commission initiatives are blocked by the need to gain unanimous approval in the Council.** The ETUC has long been in favour of moving to majority voting on corporation tax, capital tax and taxes on

activities that have an impact on the environment, believing that tax harmonisation is important to avoid competitive distortions and avoid “race to the bottom” dynamics.

Action points: the 11<sup>th</sup> Congress calls upon the ETUC to pursue a policy shift to meet the Lisbon objectives: (...) **continue to campaign for coordination and harmonisation by qualified majority of taxation with cross-frontier effects, namely corporation tax, taxation of income from capital and environmental taxes** and urges the European Union to seek international agreements on taxation (...)

- **ETUC Resolution on “the ETUC and the Lisbon Treaty” (adopted by the Executive Committee, 1-2 December 2009)**

“4. Some important demands of the ETUC were not met in the negotiations of the European Convention:

- **Qualified majority voting to become the usual procedure for social policy (...)**”

Furthermore, in the framework of the most recent Treaty revision which has led -after the failure of the Draft Constitutional Treaty - to the Lisbon Treaty currently in force, the ETUC (in particular by Emilio Gabaglio, then ETUC General Secretary and observer in the Convention) has submitted several contributions itself and/or supported/undersigned contributions by other high-level Convention members, all calling for more efficient decision-making processes and thus the need to move as much as possible to QMV in several areas<sup>16</sup>. The following are some non-exhaustive examples:

- [Contribution by Mr. E. Gabaglio, Observer at the Convention: “A Constitutional Treaty for a Social and Citizen’s Europe” \(CONV 433/02, CONTRIB 155, 27 November 2002\)](#)

This contribution contains the full ETUC Resolution with the same title as adopted by the ETUC Executive Committee of 9-10 October 2002; see above.

- [Comments on paragraphs 4 to 7 of the Mandate \[of Working Group XI Social Europe\] by Mr Emilio Gabaglio \(Working Group XI, Working Document 20, 7 January 2003\)](#)

Question 6:

The case for extending qualified majority voting linked with EP co-decision across the board in a number of policy areas is longstanding. It will be even more necessary in an enlarged European Union.

This applies also to the adoption of minimum requirements in the areas of Art 137 where unanimity is presently required. Exception could be made for “Social Security and social protection workers” although the technical coordination of social security systems (Reg 1408/71; art. 42 of the Treaty) should also be decided by qualified majority voting.

- [Contribution by E. Gabaglio, observer to the Convention: “ETUC and the European Convention” \(CONV 799/03, CONTRIB 361, 12 June 2003\)](#)

This contribution mainly summarises the evaluation by the 10<sup>th</sup> ETUC Congress (Prague, 2003) of the work of the Convention then entering in its final stage. The ETUC considered that

“(…) The draft however is still falling short of convincingly addressing all our demands, and does not exclude the risk that there could be further set-backs particularly in the social field which would be totally unacceptable. (...)

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<sup>16</sup> All contributions and documents relating to the Convention work, see [http://european-convention.europa.eu/EN/doc\\_register/doc\\_registerd402.html?MAX=151&lang=EN&Content=CONTRIB](http://european-convention.europa.eu/EN/doc_register/doc_registerd402.html?MAX=151&lang=EN&Content=CONTRIB) . See also Gabaglio (2003), Clauwaert and Lörcher (2004), Jacobs (2011) and Lörcher (2012).

Concerning the Institutional architecture and decision-making mechanism, which are also relevant to achieve a Social and Citizens Europe, the Congress confirms ETUC's long standing demands for:

- The community method and the present institutional set-up to be preserved with a strong Commission, representing the European common interest and extended powers to the European Parliament;
  - The extension of qualified majority voting generally and especially in the area of social, employment, environmental and taxation policies which have crossborder effects; (...)
- [Contribution by different members and observers of the Convention, including Mr. E. Gabaglio: "Contribution to the work of the Convention" \(CONV 596/03, CONTRIB 265, 3 March 2003\)](#)

In this Contribution the submitters propose as one of the common denominators on Institutions to:

"1. Legislative power: generalisation of the "co-decision" procedure  
The legislative power of the Union is equally shared between the Council and the European Parliament.  
(...)"

- [Contribution by Mr. Jürgen Meyer, member of the Convention: "Social Europe" \(CONV 535/03, CONTRIB 228, 4 February 2003\)](#)

(...)

#### **6. Extension of co-decision procedure and qualified-majority voting**

**After enlargement, the European social model must remain intact and be further developed.** Given the level of economic integration that has now been achieved, the efforts to create a 'social Europe' can no longer be devoted to the pursuit of purely national solutions. In order to eliminate the 'social deficit' **in Europe, co-decision and qualified-majority voting should therefore become the norm in every area of social policy in which the Community is empowered to legislate, especially since the sole purpose of its legislative activity in this domain is to go on developing the policy of setting minimum standards.** Under the Maastricht Agreement on Social Policy, the purpose of these minimum social standards is to enshrine throughout the Union a set of employment and welfare safeguards which all Member States can be reasonably expected to guarantee. These standards must be so formulated that they do not overstretch the resources of the economically weaker countries but still lead to social progress in as many Member States as possible. Care must also be taken to ensure that European legislation does not diminish higher social standards set by individual Member States but offers scope for every State to improve its social safety net.

The powers vested in the Community by the EC Treaty in the domain of social policy should therefore be unequivocally assigned to the competence category of common policies: **qualified-majority voting and co-decision would thus be introduced for decisions concerning protection against dismissal, representation of interests and conditions of employment for nationals of non-EU countries.** The foundations of such a reform have already been laid in the Treaty. Lastly, **we must not entirely rule out the possibility of considering the introduction of common minimum standards or 'social convergence criteria' in the hitherto excluded area of the social security and social protection of employees** (Article 137(4), first indent, of the EC Treaty as amended by the Treaty of Nice). The fact is that matters concerning the modernisation of the system of social protection are already subject to majority voting, and related areas of competence should, for functional reasons, be governed by the same decision-making procedure. (...)

- [Contribution by Mr. Lamassoure, member of the Convention: “For an efficient and democratic legislative process” \(CONV 778/03, CONTRIB 351, 2 June 2003\)](#)

As a general departure point in order to come to an efficient and democratic legislative process, Mr. Lamassoure considered it was necessary:

- For the condition of “efficient”: the complete abolishment of the rule of unanimity voting
  - So including for issues like combating discrimination, taxation, environment, social policy and social security/protection.
- For “democratic” character: the generalisation of co-decision between Council and European Parliament.

- [Contribution by Mrs. Pervenche Berès e.a., members of the Convention: “The Europe we need: Essential Requirements of New Federalism” \(CONV 813/03, CONTRIB 368, 16 June 2003\)](#)

A STRONG Europe in the world

(...) To fulfil its responsibility as a global player, the EU needs the political will and the instruments to develop a genuine Common Foreign and Defence Policy. (...) This would make the decision-making in this area more efficient by subjecting it to qualified majority voting. The European Parliament needs to be empowered to exercise democratic control also in the area of Foreign policy of the EU. (...)

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## Appendix

### **Informal Exchange of Views with EU Social Partners:**

#### **More efficient law-making in social policy**

##### **DG EMPL, J27 – 10H30-13H30**

President Juncker announced in his 2018 letter of intent that further proposals to give perspective for the future of the Union would include an initiative on more efficient law-making in social policy, through the identification of areas for an enhanced use of qualified majority voting. This initiative is included in the 2019 Commission Work Programme issued on 23 October 2018 and it will contribute to the process leading up to and beyond Sibiu.

Since the start of its mandate, this Commission has placed social policy at the core of its agenda and taken concrete actions to further develop the social dimension of the EU. A lot has been achieved, in particular the proclamation of the European Pillar of Social Rights accompanied by a series of legislative proposals, a new social scoreboard and a sharpened social focus of the European Semester. Social dialogue has also been strengthened and, in this new start, the Social Partners have been closely involved in all social achievements, always in close contact with the Commission.

To keep this momentum, the Commission wishes to explore the possibility of applying tools in the existing legal framework that allow for more efficient law-making in social policy. EU Treaties contain so-called passerelle clauses that allow shifting decision making from unanimity to qualified majority voting (QMV) or from special legislative procedure to ordinary legislative procedure. Passerelle clauses do not interfere in the division of competences between Member States and the EU, nor in the criteria and/or constraints in the legal bases.

With regard to the social field, unanimity is still required in the following areas: measures combatting discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 19(1) TFEU); measures on social security or social protection for citizens exercising free movement (Art. 21(3) TFEU); social security and social protection of workers (Art. 153(1)(c) TFEU); protection of workers where their employment contract is terminated (Art. 153(1)(d) TFEU); representation and collective defence of the interests of workers and employers (Art. 153(1)(f) TFEU) and conditions of employment for third country nationals legally residing in the Union (Art. 153(1)(g) TFEU). Two passerelle clauses could be used for changing the unanimity requirement to QMV: the general clause in Article 48(7) TEU and the specific one in Article 153(2) TFEU, the latter applicable only with regard to Articles 153(1) (d), (f) and (g) TFEU.

In this context, DG EMPL would like to have an informal exchange of views with the Social Partners with the focus on the following:

- What was the position of the Social Partners when decisions were taken on the introduction of some social provisions in the TFEU under unanimity? What were the main concerns that called for unanimity? Would these concerns still be present?
- In view of the opportunities and challenges related to the future of work and with a view to allow for more efficient law-making in the social field, what are the Social Partners' views on the use of the passerelle clauses? In which areas should they be applied, under which conditions (for example, only for specific aspects) and why?

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