

ETUC Submission on the European Commission Roadmap

‘More efficient law-making in social policy: identification of areas for an enhanced move to qualified majority voting’¹

Introduction

The ETUC has not taken 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 specific issue-related resolutions on the need to have more efficient decision-making procedures (including voting requirements) in and for the EU. For instance, in its Resolution in 2009 on “The ETUC and the Lisbon Treaty”, the ETUC regretted that its call for “**qualified majority voting to become the usual procedure for social policy**” was not met.²

The ETUC is broadly supportive of the EU Commission’s proposal to explore how the use of the so-called ‘Passerelle clauses’ in the EU Treaties can be a means to secure improvements at EU level for working people, their families and communities. However, our support is not unconditional. Before advancing along the Roadmap the ETUC is seeking assurances that the second part of the ‘Passerelle clauses’, relating to the switch from special legislative procedure to ordinary legislative procedure do not change the role of European social partners guaranteed under the Treaties. We are also calling for a clear statement of how the different clauses will operate in practice, for example, is the move to QMV on a case by case basis? how the different clauses interact with each other? How does the ‘brake clause’ operate? and how the autonomy of social partners, and their collective agreements will be protected?

What is at stake for working people in Europe

While most EU social policy legal bases allow for decision-making under Qualified Majority Voting (QMV), some areas remain subject to unanimity voting. These areas include areas of significant interest to workers and their families, such as combating discrimination (article 19 (1) TFEU), social security and social protection of workers, protection of workers where their employment contract is terminated, workers’ and employers’ representation and collective defence, and conditions of employment for third-country nationals (article 153(2) TFEU). But also, in other fields, which have strong links to social policy and the interests of workers, like combatting social dumping and tax competition (e.g. taxation in article 113 TFEU) and environment (e.g. article 192 (2) TFEU).

The experience of recent years has demonstrated that unanimity voting slows down the adoption of legislation of interest to workers. It creates for each Member States a de facto veto-right, which limits the incentive for European social partners or the Commission to even begin to propose solutions to some of the most pressing problems experienced by workers in Europe. Unanimity leads to prolonged negotiating processes and it carries with it the very real risk that the EU cannot come to a decision at all, as a single country is able to block the decision, or in other circumstances the solution agreed is established on the basis

¹ [Ref. Ares\(2018\)6590105-20/12/2018](#)

² See document “Passerelle clauses in the EU Treaties”, ETUI note, Stefan Clauwaert, version 8 November 2018.

of the lowest common denominator. However, it is clear that there are tensions at Member State level. It is unwise to ignore these concerns, especially as moving ahead needs unanimous support. The Roadmap needs to provide a mechanism to collect the concerns and address these.

ETUC Key Messages

Proceed with caution and in full respect of the role of European Social Partners

The support of working people and their trade unions for the use of the 'Passerelle clauses' is not unconditional. Any move to extending majority voting would need to be approached with caution and in full respect of the role of the European social partners. The ETUC is particularly concerned about the following matters

- 1) the ETUC is seeking assurances that the mandatory social partners' consultation under Article 154-155 TFEU would remain unaffected by the use of any 'Passerelle clause', and that the Commission shall in line with these articles continue to consult them before submitting any proposals in the social policy field. Likewise the provisions whereby Social Partners may decide to open negotiations and to deal with a specific issue through bipartite social dialogue at any stage during the two consultation phases must be guaranteed. This question arises as the 'Passerelle clauses' allow procedural changes, not only from unanimity to qualified majority voting but also from special legislative procedure to ordinary legislative procedure. It is essential that no ambiguity about the continuing role of the social partners is created. The Roadmap must at an early stage confirm the situation. In addition, if the 'Passerelle clauses' operate on a case by case basis the use of the 'Passerelle clauses' should also be referred to the Social Partners.
- 2) It is thus of particular concern that the anticipated involvement of social partners in the discussions is limited to 'exchanges of views with social partners are envisaged' but not "consultations"; given the fact that we are considering here initiatives/areas in the social field and thus in the framework of Articles 154-155 TFEU, this omission of social partner consultations as part of the Roadmap is of significant concern and does not dispel any fears.
- 3) In line with this, and as indeed the enhanced use of these 'Passerelle clauses' is also envisaged in fields with strong links to social policy and workers and trade union interests, like taxation and environment, the ETUC insists that also in the consideration of the use of 'Passerelle clauses' for these initiatives an effective involvement and consultation of European social partners is ensured.
- 4) The ETUC agrees that the Roadmap should identify how extending QMV to the social field could facilitate faster and more responsive policy making to the benefit of workers, their families and communities in respect of:
 - 1) measures relating to protection after the termination of an employment contract,
 - 2) social representation and the defence of workers' and employers' interests,

- 3) conditions of employment for third-country nationals legally residing in Union territory,
- 4) social security and social protection of workers, and
- 5) combatting discrimination.

It is worth recalling here that the specific 'Passerelle clause' in Article 153(2) TFEU would enable a transition to the ordinary legislative procedure and qualified majority voting in the first three areas above, it is essential then that we have clarity about the continued role of Social Partners. The general 'Passerelle clause' in Article 47 (TEU) could also be applied to questions of social security and social protection. The 'Passerelle clause' in Article 19(1) TFEU can be used for measures relating to combatting discrimination. But we note that the Commission's Roadmap does not refer to the use of the 'Passerelle clause' in Article 19(1) TFEU, an omission which should be rectified, the Roadmap should consider how the move to QMV could assist the EU to progress in combatting all forms of discrimination.

- 5) Also while reference is made the Commission initiatives making use of 'Passerelle clauses' in the area of taxation and common foreign and security policy (CFSP) surprisingly no mention is made to a similar initiative of using the clause in the area of environment (energy and climate) although also envisaged in the Commission Work Programme 2019 for Q1 2019; for reasons of completeness and coherence, ETUC suggest to refer to the latter initiative in this Roadmap as well.
- 6) ETUC also seeks clarification on the rather confusing language in the Roadmap regarding the 'Basis for EU intervention' whereby it is stated on the one hand that 'the subsidiarity principle is not in question in this initiative' but on the other hand that 'any concrete proposal ensuing from the decision to move to qualified majority voting will have to respect the limits of the respective legal basis and... the subsidiarity check'.
- 7) Finally, ETUC stresses that there is a lot of confusion about how the clauses actually (will) operate, for instance, what is the relationship between the different 'thematic' and general Passerelle clauses', whether they operate on a case by case basis or is the change a 'once off' (and in this case how does the 'brake' process operate). It would therefore be of significant assistance if the Commission could clarify the practical operation of the clauses to us.

The ETUC remains of course at your disposal for any clarification you might need on it.

Yours sincerely,

Esther Lynch

Confederal Secretary

