Implementation of “passerelle” clauses in the EU Treaties

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The Constitutional Affairs Committee adopted an own-initiative report by Giuliano PISAPIA (S&D, IT) on the implementation of the passerelle clauses in the EU Treaties.

Activation of passerelle clauses

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. The unanimity voting requirement has often blocked EU action in different areas.

Therefore, Members consider it urgent to go beyond unanimity and move as soon as possible to qualified majority voting (QMV) and ordinary legislative procedure (OLP) in key policy fields in order to improve the EU’s capacity to act.

Members consider that the **passerelle clauses are an important tool** for increasing the Union's capacity to act quickly and effectively. As the law currently stands, passerelle clauses can already be activated, but only after a unanimous vote in the Council or the European Council. Members therefore suggest making it possible to activate them after a QMV and call for the **Treaties to be amended accordingly**.

The current and upcoming Council presidencies are urged 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.

Areas for the activation of the passerelle clauses

Members suggested using the passerelle clauses:

- to move to QMV in **specific areas of the CFSP**, in particular to adopt restrictive measures against third country governments, non-state entities and individuals, including decisions under the EU's global human rights sanctions regime and those taken in response to Russia's war of aggression against Ukraine;

- for **certain tax issues**, which would contribute to the establishment of a more effective and consistent framework for the collection of taxes and the fight against tax fraud, evasion and avoidance;

- for certain aspects of environmental and energy policies;

- for the **anti-discrimination measures** provided for in Article 19 TFEU and to strengthen the Union's capacity to implement measures protecting all **workers' rights**;

- to move to the OLP in areas related to the **protection of fundamental rights** in the EU, for example by activating the sectoral passerelle clause on family law with cross-border implications;

- 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.

Members reaffirmed their commitment 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. They also called 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 particular for: (i) 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; (ii) 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.

Time frame for the gradual activation of passerelle clauses

(1) Short-term priority areas (by the end of 2023), the passerelle clauses should concern: (i) the decisions relating to 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; (ii) the approval by QMV and in accordance with the OLP of energy policy measures where they are essentially fiscal in nature; iii) the switch to the OLP for certain environmental measures in the wider context of the climate and environmental emergency and the objectives set out in the Green Deal for Europe; (iv) the revision of the current MFF following the 2024 mid-term review that will be presented by the Commission;

(2) Medium-term priority areas (by the end of 2024 or the current Commission's mandate), the passerelle clauses should be activated to: (i) ensure that Union positions on human rights in multilateral forums, international agreements in the area of the CFSP and CSDP civilian missions are taken by QMV; (ii) 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; (iii) 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;

(3) Long-term priority areas (as soon as possible in the next legislative term), the passerelle clauses should be activated to: (i) 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; (ii) allow the Council to adopt the next MFF through QMV instead of unanimity; (iii) allow certain social policy and anti-discrimination measures to be approved by OLP and QMV; (iv) 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.