



# A Union that Delivers Making Use of the Lisbon Treaty's Passerelle Clauses

European Political  
Strategy Centre

The unprecedented speed of societal, technological and geopolitical change in today's world means policymaking needs to undergo **a step change in responsiveness and agility**. Issues that could perhaps afford to be deliberated over several years in the past, today may need to be brought to conclusion in a matter of weeks or months – though of course **timeliness must go hand in hand with robust, evidence-based policy elaboration**.

In addition, the scale and urgency of the challenges facing Member States today – be it in terms of internal and external security, globalisation, migration, climate change, or adapting to the digital revolution – means that **important decisions should not be allowed to be held hostage while Member States seek to exact the highest possible price in return for not using their veto power**.

Most citizens agree that the EU has a growing role to play in defining common solutions to these overarching, shared concerns. But **all too often, EU decision-making remains laborious – or indeed impossible – due to the prerequisite of achieving unanimity** among all Member States.

**Shifting to qualified majority voting has been shown to change negotiating dynamics in the EU**. The mere possibility of voting encourages a shift in behaviours, compelling Member States to join in negotiations and achieve a compromise. And indeed, in areas where qualified majority is already the rule – notably EU trade policy – experience has shown that it **not only results in more effective decisions but also strengthens the EU's role as a global actor**.

Proceeding by consensus may still be appropriate for some decisions, such as those with military or defence implications. But this should not hamper action in other areas such as Common Foreign and Security Policy, taxation or social policy, which are central to addressing today's biggest societal challenges. This is all the more true in a Union that now has 60 years of joint history behind it, and whose performance is judged by citizens on its record of delivery.

The Lisbon Treaty was designed in such a way as to allow for a transition to more effective modes of decision-making thanks to the inclusion of flexibility mechanisms known as 'passerelle clauses'. **Making use of these clauses is not a question of widening EU competencies, but one of making the use of existing competencies more efficient**. Not only were these mechanisms agreed upon by all Member States at the time of drafting the Treaty, but **the decisions about triggering them remains firmly in their hands**. Ten years after the Treaty entered into force and on the eve of the EU's renewal at 27, the time seems ripe to do so. The EU cannot waste this opportunity to equip itself better for demanding times ahead.

**'We must improve our ability to speak with one voice when it comes to our foreign policy [...] 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 the passerelle clause which allows us to move to qualified majority voting – the "lost treasure" clause of the Lisbon Treaty.'** – *European Commission President Jean-Claude Juncker, State of the Union Address, 12 September 2018*

## Disclaimer

The views expressed in the EPSC Briefs are those of the authors and do not necessarily correspond to those of the European Commission.

### The Treaty's 'lost treasure'

Foreseeing the need to one day further broaden the scope of qualified majority voting, **the Lisbon Treaty introduced a number of 'flexibility mechanisms'.** **These make it possible to simplify decision-making processes** and enable a more efficient exercise of Union competences in areas where special legislative procedures and unanimity were maintained. These simplifications would not require the cumbersome process of treaty reform. They include what are often referred to as the '**passerelle clauses**', which enable:

- a transition **from voting by unanimity to qualified majority voting** in specified policy areas, or;
- a shift from the special legislative procedure to the ordinary legislative procedure in specified policy areas.

There is **both a general passerelle clause<sup>1</sup>** that is **applicable to all European policies** – except in case of decisions with military or defence implications – **as well as specific passerelle clauses that apply to defined European policy areas<sup>2</sup>**, namely: Common Foreign and Security Policy, judicial cooperation in civil matters, social policy, environmental policy and the Multiannual Financial Framework.<sup>3</sup> There are also provisions pertaining to decisions on enhanced cooperation.<sup>4</sup>

In his September 2017 State of the Union speech, President of the European Commission, Jean-Claude Juncker, breathed new life into the yet unused passerelle clauses, presenting them as an important tool for achieving a stronger, more efficient and more democratic Union: a tool that can help the Union build its new future as an EU of 27 and pursue more far-reaching and ambitious reforms. He also identified specific policy areas where the passerelle clauses should be implemented as a matter of priority to ensure greater efficiency of decision-making: common consolidated corporate tax base, VAT, fair taxes for the digital industry, the financial transaction tax and some issues of foreign policy.

One year later, the European Commission followed up with concrete proposals<sup>5</sup> to move from unanimity to qualified majority voting in specific areas of the EU's Common Foreign and Security Policy (CFSP). These proposals identify three areas where doing this could help the EU to better promote its values globally and defend its interests, namely: (1) in responding collectively to attacks on human rights (2) in applying effective sanctions and (3) in launching and managing civilian missions. Proposals for an enhanced use of qualified majority voting in the field of taxation and in social policy are expected to be presented in the first months of 2019.

#### Box 1. A gateway to more effective decision-making

The first efforts to streamline the process by extending qualified majority voting (QMV) in the Council resulted in substantial political tensions, with France boycotting the Council of Ministers in what was called the 'empty chair crisis'. **It took until the mid-1980s for European leaders to decide to extend qualified majority voting** to most matters of economic integration.

With the benefit of hindsight, it can be considered that this decision paved the way for the creation of **the European Single Market**. The shift to qualified majority voting for most decisions pertaining to the Single Market, as a result of the Single European Act of 1986,<sup>6</sup> acted as the main catalyst for the completion of the iconic project, instilling a fresh dynamism within the Community. **After years of relying on unanimity, Member States suddenly had to negotiate and compromise** on harmonisation measures, looking for common solutions, rather than protecting their narrow interests.<sup>7</sup> **The results were unprecedented.** Within six years of the entry into force of the Single European Act, 265 of the roughly 300 proposed measures to eliminate barriers to intra-Community trade, contained in the European Commission's *White Paper on Completing the Internal Market*, had been successfully adopted.<sup>8</sup>

This shows how the use of qualified majority rather than unanimity to arrive at common decisions introduces a different logic to the political process in the Union – **a shift in strategic culture**. No longer able to rely on their veto right, Member States instead need to mobilise all their power of conviction to build broader alliances. Rather than baldly sticking to their particular point of view, they need to contribute to the emergence of a common denominator that addresses everyone's interests in the best possible fashion.

The **successive enlargements** of the European Union provided an essential motivation for further streamlining decision-making processes, with a wave of treaty reforms in the 1990s and 2000s. As a result, the scope of unanimity rule has been significantly reduced. **Nevertheless, it continues to apply in a number of important areas and therefore weighs heavily on the Union's ability to act.**

It is important to note that any use of **the passerelle clauses would not alter the division of powers between Member States and the EU**. Indeed, the use of such clauses requires both **unanimous approval** of the Member States (in the Council or the European Council), as well as some form of intervention of the European Parliament – be it in the form of consultation or consent – depending on the type of passerelle that is applied to each individual case. In addition, passerelle clauses often continue to demand the **involvement of national parliaments**, with some Member States foreseeing an explicit decision of their national parliaments before supporting the use of a passerelle. What is more, any concrete proposal ensuing from a decision to move to qualified majority voting would still have to respect the limits of the respective legal basis and the usual subsidiarity checks.

### Rising to the global challenge

In a more troubled and less secure world, there is little doubt that **the EU needs a strong foreign policy**. Yet, unlike in most other areas, unanimity remains the general rule with regard to Common Foreign and Security Policy.<sup>9</sup> **In recent years, there have been several emblematic examples of European unity being blocked by individual Member States on key files**, illustrating just how difficult it is for the EU to be a decisive global actor when unanimity is required.

For the first time ever, in June 2017, the EU failed to make any statement at the **United Nations Human Rights Council**, after one Member State blocked a common statement that would have criticised China's human rights record. This Member State in question argued that the statement would have been 'unproductive' and 'selective'. The decision was correlated with a large Chinese investment in its ports.

Similarly, another Member State, which is a large recipient of Chinese investments, has **repeatedly blocked EU statements criticising China's human rights record**.

In July 2016, faced with China's refusal to accept the Permanent Court of Arbitration's ruling on the **South China Sea** dispute between China and the Philippines, which stated that Beijing was violating Manila's rights under the United Nations Convention on the Law of the Sea, several Member States opposed a strong statement in defence of that court's judgment – in the context of significant Chinese investments in the EU.

What is more, two Member States repeatedly threatened to block the extension of **sanctions against Russia for its aggression in eastern Ukraine** during renewal periods. Similarly, when the EU sought to apply

**targeted sanctions against Venezuela's Maduro government** after the election of the controversial Constituent Assembly in July 2017, one Member State blocked the move, effectively limiting the EU's reaction to a comparatively weak 'statement of concern'.

And, more recently, in December 2017 and May 2018, attempts to rapidly issue a unified EU response to **US President Trump's announcements concerning the status of Jerusalem** were held back by a handful of Member States.

**'It is not right that our Union silenced itself at the United Nations Human Rights Council when it came to condemning human rights abuses by China. [...] It is not right that one Member State was able to hold the renewal of our arms embargo on Belarus to ransom, or that sanctions on Venezuela were delayed for months when unanimity could not be reached.'** – *European Commission President Jean-Claude Juncker, State of the Union Address, 12 September 2018*

Confronted with ever more pronounced geopolitical rivalries, rising geo-economic competition and unprecedented pressure on the rules-based multinational order, **the need for a single and unified European voice will only increase. The EU must be in a position to respond swiftly and decisively** if it is to protect and defend European interests and remain a strong and credible actor on the global stage. It cannot do this if each Member State is vulnerable to pressure by third countries that try to leverage unrelated benefits (e.g. foreign investment) to serve their outside foreign policy interests.<sup>10</sup> **Shifting to qualified majority voting would help to insulate the EU from external pressures and 'divide-and-conquer' strategies.**

This is why **Member States are being asked to explore the possibility, offered by the specific passerelle in Article 31(3) TEU, to switch to qualified majority voting in selected areas**, even though unanimity in Common Foreign and Security Policy will remain the norm.

First of all, more political unity is needed on **human rights**, both inside and beyond international human rights fora. This is critical to maintaining the EU's international credibility and global soft power. **An agreement to move to qualified majority voting on human rights** would help to avoid persistent European deadlock and enable more efficient and reliable EU action.

Secondly, given the EU's considerable economic weight, **sanctions** are and should remain one of the EU's strongest foreign and security policy tools. While fair economic burden-sharing among Member States is important to the EU's internal debate on sanction regimes, **individual national economic interests should not *per se* override the joint European interest** in deploying its significant toolbox – which is more often than not part of a broader international reaction against severe violations of the multilateral order. Already today, existing EU sanctions regimes can be adapted by qualified majority voting on the basis of Article 31(2) TEU – e.g. to amend the list of persons, entities and bodies subject to EU sanctions. **A switch to full qualified majority voting would enable the sanctions instrument to be firmly placed at the service of the common European interest.**

Finally, the use of the passerelle of Article 31(3) TEU should be applied to decisions relating to **civilian Common Security and Defence Policy missions**, as one of the most distinct and globally unique trademarks of the EU's external action.<sup>11</sup> The EU must be able to rapidly send civilian missions into crisis situations, rather than be compelled to negotiate one mission against another, as was the case with the Sahel and Iraq deployments.<sup>12</sup>

**Moving forward on qualified majority voting in these areas would significantly strengthen the Union's Common Foreign and Security Policy and its voice on the global stage.** The EU would emerge as more responsive and ready to act united. It would be more resilient to interference by third countries attempting to gain influence and drive a wedge between EU Member States on core foreign policy decisions.

**There are sufficient safety nets in the Treaty for Member States not to fear being overruled on issues they find fundamentally important.** Article 31(2) TEU enables individual Member States to oppose the adoption of a decision that is to be taken by qualified majority 'for vital and stated reasons of national policy', even after a passerelle has been activated. If this happens, either an acceptable solution should be found in consultation with the High Representative, or the Council – acting by a qualified majority – can request that the matter be referred to the European Council for a decision by unanimity.<sup>13</sup>

**A further protection mechanism lies in the possibility of 'constructive abstention'** contained in Article 31(1) TEU, whereby Member States have the possibility to abstain from applying decisions that are adopted by unanimity when they have qualified their abstention. It could be argued that this tool could also apply in the context of adopting a passerelle.

## A fresh boost to the Single Market

Foreign policy is not the only area where the European Union could benefit from greater efficiency in decision-making. As stated earlier, the Single Market is one of Europe's biggest achievements – a driving force for jobs and growth, creating globally competitive companies and fostering the development of high-quality rules and standards that have shaped global norms. **Yet, more than thirty years after its launch, the Single Market remains unfinished.**

### Box 2. General versus specific passerelles in the Single Market

The **general passerelle laid down in Article 48(7) TEU** allows the European Council, acting by unanimity, to adopt a decision authorising the Council to act by qualified majority in any 'area' or for any 'case' that would usually be covered by unanimity, or to apply the ordinary legislative procedure on decisions that would normally require a special legislative procedure.

The **specific passerelle clauses** that apply to the Single Market – namely with regard to **social policy** or **environmental policy** – allow the Council, acting unanimously on a proposal from the European Commission, to apply the ordinary legislative procedure to 'fields' and 'matters' where special legislative procedures would usually apply.

Unlike the provisions laying down specific passerelles, **the general passerelle requires Member States to first obtain the consent of the European Parliament.** This must be given by a majority of its component members. The specific passerelles require only a consultation of the European Parliament.<sup>14</sup>

In addition, the intention to use the general passerelle clause must be notified to national Parliaments, which have six months to make their opposition known – in which case the decision cannot be adopted. In the absence of such opposition, the European Council may adopt the decision. This means that, **in practice, recourse to Article 48(7) TEU is challenging, giving each national parliament an effective power of veto.**

Completing it could unleash substantial economic benefits. The removal of remaining internal barriers in digital, energy and financial markets and services would offer unique opportunities at a point in time when scale matters more than ever in the globalised world economy.<sup>15</sup>

**While qualified majority voting is already the rule for most Single Market decisions, exceptions remain** with regard to measures concerning taxation, the free movement of persons, and the rights and interests of employed persons.<sup>16</sup> **A shift to qualified majority voting in these areas could help accelerate the Single Market's completion.** This could be achieved either by using the general passerelle clause, or by applying policy-related passerelle clauses (Box 2).

## Pursuing much-needed taxation reforms

The EU has a thorny history when it comes to taxation reforms, with many proposals failing to reach the threshold of approval by all Member States. Although there has been progress – largely in response to public pressure, for example on base erosion and VAT – it is arguable that more would have been achieved without the unanimity requirement.

And, as European integration progresses and the economy undergoes significant and fast-paced transformation, **the cost of unanimity on tax issues is only set to get higher.** Indeed, in a world where European integration was essentially limited to the

trade of goods, the cross-border effects of taxation were much more contained than they are today, where businesses rely heavily on hard-to-value intangible assets, data and automation, which in turn facilitate online trading of goods and services across borders. This increased economic and financial integration makes faster progress on tax reform proposals even more important.

For one, as the tax base becomes more mobile, Member States are increasingly constrained in the execution of their fiscal sovereignty. A recent study found that **profit-shifting in the EU already causes losses in revenue worth some 50-70 billion euro a year.**<sup>17</sup> The existence of different corporate tax regimes in every Member State also imposes unnecessary red tape on companies that want to operate across borders. This is particularly burdensome on those smaller companies that cannot afford to hire lawyers to guide them through the legal complexities, and can act as a contributing factor driving many start-ups to relocate outside of Europe.

The proposal on a **Common Corporate Tax Base and a Common Consolidated Tax Base (CCCTB)** aims to address this situation in the field of corporate taxation, by putting Member States back in charge of taxing economic activity generated on their territory. It proposes a single set of rules to calculate companies' taxable profits in the EU, while Member States would continue to be free to set their own tax rates. The proposal would go a long way in addressing the core issues of tax avoidance, base erosion and profit-shifting by multinational enterprises, thanks to concrete measures to prevent aggressive tax planning, boost tax transparency and create a level playing field for all businesses in the EU.<sup>18</sup> However, the need for

### Box 3. Towards a Single VAT area

Central to the **Single VAT area**<sup>19</sup> is the idea of taxing goods sold from one EU Member State to another in the same way as those sold within individual countries. Current EU legislation on VAT was designed with the aim of arriving at a common VAT system based on a '**country of origin**' principle, whereby VAT would be paid in the country of the seller, not the customer. The problem with this system is that, due to the lack of control mechanisms, it enables cross-border fraud, for instance when suppliers pretend to have transported goods to another Member State, but these are in fact consumed locally, VAT-free.

After many years of fruitless attempts to implement a workable system, the European Commission abandoned the 'country of origin' principle in favour of a '**country of destination**' approach, whereby VAT would always be paid to the Member State of the final consumer and charged at the rate of that country. In such a system, differences in VAT rates may still affect the functioning of the Single Market to a certain extent, in that consumers can cross the border to buy goods and services at lower rates. However, suppliers can no longer derive significant benefits from being established in a lower-rate Member State. It is thought that this new approach could help to reduce cross-border VAT fraud by 40 billion euro per year.

Other features of the proposed reform include creating an online one-stop-shop for traders to make declarations and payments in their own language and according to the same rules and administrative templates as in their home country, as well as simplified VAT rules for SMEs.



unanimity on the issue has prevented progress in the past. **The current proposal from 2016 follows up on a proposal brought forward back in 2011**, which was put on hold for years due to opposition from some Member States, and eventually withdrawn.

In addition to the multitude of corporate taxation regimes, the EU is also home to a range of **Value Added Tax (VAT) rules**. Current rules at the EU level date back to 1993 and were meant to be transitional. **However, the requirement for unanimity has made it impossible to push through a reform up until today**. In many cases, each EU country still applies different rules and domestic and cross-border transactions might be treated differently. This represents a major barrier to completing the Single Market and results in costly procedures for the growing number of European businesses that operate across borders. Simplifying and modernising VAT rules through a single return of VAT across the EU would slash administrative burdens for cross-border companies, generating overall savings to businesses of 15 billion euro per year. The Single VAT area proposal (same rules on domestic and cross-border supplies) is expected to decrease VAT fraud by 40 billion euro per year.

With this in mind, the European Commission has put forward a **VAT action plan<sup>20</sup>** aimed at **creating a Single VAT area** and modernising rules to keep pace with the challenges of today's global, digital and mobile economy. Indeed, **there is growing agreement that current tax rules – initially designed for 'brick and mortar' economies – no longer fit the modern context**.

In all these fiscal areas, **a shift to qualified majority voting using the passerelle clause would facilitate faster progress on reform proposals**, helping to ensure that taxation policy becomes a genuine pillar of the Single Market and contributes to overarching EU policy priorities.

## Boosting EU leadership on climate change

Enhancing the efficiency of decision-making on fiscal files also holds potential to make progress in other areas. Indeed, recognising that **stimulating investments in the clean economy** is not only essential for the future of the planet, but also represents an opportunity for the modernisation of the European industry and economy, the European Commission – already back in 2011 – put forward proposals aimed at **modernising EU rules on energy**

**taxation**. These had in fact not been reviewed since 2003. The goal was to restructure the taxation of energy products in order to remove imbalances and distortions, and support the EU's wider environmental and energy goals.

However, currently, any rules pertaining to environmental policy that are 'primarily of a fiscal nature' must be taken by a unanimous decision of the Council. As a result, four years of unsuccessful negotiations between the Member States ensued, and the proposal was finally withdrawn by the Commission in 2015.

Yet, **updating these rules will be crucial to curbing the dominance of oil and keeping the EU on track with its global commitment to limit climate change**.

The recent 'Clean Planet for All' strategy outlined by the European Commission in November 2018 acknowledges this by stressing that taxation is amongst the 'most efficient tools for environmental policy'. Taxes, carbon pricing and revised subsidy structures are needed to steer the transition towards a low-carbon, energy-efficient, circular societies, and to create new sources of funding for low-carbon technologies and infrastructures. Developing environmental taxation that is socially fair will be crucial to ensuring a smooth transition across Europe, as the shift to a low-carbon society will create winners as well as losers, in particular in carbon-intensive sectors and regions. **The EU must thus urgently agree on redistributive measures aimed at supporting those individuals, businesses and regions most affected, as well as on fiscal incentives aimed at encouraging investments in low-carbon technologies** – and hence maintaining Europe's global leadership in the clean economy. It cannot afford to lose more precious years as Member States fail to achieve unanimous consensus on the details of the reform.

**The passerelle clause in Article 192(2) TFEU offers an opportunity to overcome the stalemate.**

It would enable a shift to the ordinary legislative procedure, with qualified majority voting in the Council on fiscal issues relating to environmental policy, and other issues, so long as these contribute to preserving, protecting and improving the quality of the environment, protecting human health, a prudent and rational utilisation of natural resources, or combating climate change.

**By taking up this opportunity, EU leaders could show true climate leadership, while also opening new opportunities to boost the clean economy.**

# A more responsive social policy?

Europeans have high expectations from both national governments and the EU to improve working conditions, access to social protection and inclusion. Across Europe, surveys and Citizens' Dialogues consistently rank employment and social policy among the top priorities and concerns of Europeans.<sup>21</sup> Yet, rising social discontent in many parts of Europe also points to a relative dissatisfaction in the way these issues are currently being addressed.

In particular, globalisation, technology, changes in individual preferences and demographic changes are contributing to important shifts in labour markets, creating new challenges, and often fuelling a palpable sense of social dislocation and employment insecurity across middle and lower income classes. Digitalisation has significantly increased the pace of change, leading to greater job polarisation and the rise of new, non-standard forms of employment, which provide more flexibility but also less protection, while at the same time facilitating cross-border work in the EU.

The proclamation of the European Pillar of Social Rights in November 2017 by the Heads of State and Government came as a response to these concerns, indicating a joint commitment at the highest level to uphold the values and principles that have underpinned Europe's social market economies, also in a more digital and globalised world.

Indeed, it has become clear that the current socio-economic context demands greater coordination and a continued ability to ensure a level-playing field across the Single Market. **Improving the efficiency of decision-making processes on social policy could arguably help to achieve better and faster results, enabling Europe's social policies to be more responsive to the needs of EU citizens.**

Contrary to taxation, the very vast majority of social policy domains at EU level are already governed by qualified majority voting and this has in fact enabled significant advances over the years in terms of ensuring a level playing field across Member States.

Remaining areas that are subject to unanimity voting include:

- measures relating to protection after the termination of an employment contract,
- social representation and the defence of workers' and employers' interests,
- conditions of employment for third-country nationals legally residing in Union territory,
- social security and social protection of workers.

The specific passerelle option in **Article 153(2) TFEU would enable a transition to the ordinary legislative procedure and qualified majority voting** in the first three areas, while the general passerelle could also be applied to questions of social security and social protection.

The ongoing societal shifts, along with a number of other developments could create an opening for these clauses to be applied. For one, the UK's decision to leave the EU has changed the nature of the debate in the social policy area. Secondly, a series of rulings by the European Court of Justice, notably the *Elektrobudowa*<sup>22</sup> case on the posting of workers, the *RegioPost*<sup>23</sup> case on minimum wages and the *AKT*<sup>24</sup> case of temporary agency work of 2015, have altered the landscape.

**Yet, the coordination and harmonisation of social policies across the Union is a highly sensitive issue**, and any move to extending majority voting would need to be approached with caution and in full respect of the role of the social partners.

# Conclusion: equipping the EU with the decision-making tools to deliver

---

Being able to respond effectively and speedily to emerging challenges is a virtue of every public institution, the European Union in particular. When faced with rapidly evolving circumstances, shifting positions of international partners and competitors, as well as the changing expectations of citizens, **Europe needs to be able to act and deliver what it sets out to do.**

With its passerelle clauses and other autonomous revision procedures, the Treaty of Lisbon boasts an unexplored potential that can be used to enhance the efficiency and democracy of EU decision-making, in line with the blueprint presented by President Juncker in his 2017 State of the Union speech. Critically, **even when such clauses are applied, the power continues to rest firmly in the hands of the Member States, as the first step always needs to be taken by unanimity** either by the Council or the European Council. Thus, **making full use of this untapped potential is simply a question of political will.**

Past experience has already provided ample evidence that qualified majority voting – combined with a convincing narrative agreed by all Member States – can be a forceful driver for progress: the introduction of qualified majority voting acted as the main catalyst for the completion of the internal market. The use of passerelle clauses today can draw inspiration from this process and initiate **a shift in strategic culture at EU level on policy files that are essential to responding to modern-day challenges.**



1. Article 48 (7) of the Treaty on the European Union (TEU).
2. EUR-Lex, 'Flexibility in EU decision-making: passerelle clauses, brake clauses and accelerator clauses', <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:ai0019>.
3. Respective provisions in Articles 31(3) TEU, Article 81(3) Treaty on the Functioning of the European Union (TFEU), Article 153(2) TFEU, Article 192(2) TFEU, Article 312(2) TFEU.
4. Article 333(2) TFEU.
5. 'State of the Union 2018 - Qualified Majority Voting in the Common Foreign and Security Policy', [https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2018/state-union-2018-qualified-majority-voting-common-foreign-and-security-policy\\_en](https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2018/state-union-2018-qualified-majority-voting-common-foreign-and-security-policy_en).
6. This was done with the insertion of the then Article 100a in the European Economic Community Treaty – today Article 114 TFEU.
7. See S. Novak, 'Qualified majority voting from the Single European Act to the present day: an unexpected permanence', Study & Research no 88, Notre Europe, 2011 (available at <http://www.delorsinstitute.eu/011-2918-Qualified-majority-voting-from-the-Single-European-Act-to-present-day-an-unexpected-permanence.html>).
8. J. Kenner, 'EU Employment Law: From Rome to Amsterdam and Beyond', Bloomsbury, 2002, at 81.
9. See Article 22(1) TEU, Article 33 TEU, Article 41(3) TEU, Article 45(2) TEU, Article 218(9) TFEU.
10. Communication from the Commission to the European Council, the European Parliament and the Council, 'A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy', COM(2018) 647 final, 12 September 2018, at 3.
11. That being said, in the context of Permanent Structured Cooperation, certain decisions can be adopted by qualified majority, not as a result of the application of the passerelle in Article 31(3) TEU but following the special provisions on Permanent Structured Cooperation laid down in Article 46 TEU.
12. Communication from the Commission to the European Council, the European Parliament and the Council, 'A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy', COM(2018) 647 final, 12 September 2018, at 6-7.
13. See Bottner and Wessel, 'Article 31 [Procedures for the Adoption of CFSP Decisions]', in H.J. Blanke and S. Mangiameli (eds), 'The Treaty on European Union', 2013, Berlin Springer, 1051-1075, at 1065.
14. With the exception of Article 31(3) TEU in the context of CFSP, which does not even require consultation, but of course does not apply to the Single Market.
15. European Parliament Research Service (2014): 'The Cost of Non-Europe in the Single Market ('Cecchini revisited') - An overview of the potential economic gains from further completion of the European Single Market', September 2014.
16. EUR-Lex, 'The Single European Act', <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0027>.
17. As identified by the [OECD Base Erosion and Profit Shifting Project](#), in which many EU Member States have participated.
18. European Commission, 'Staff Working Document, Impact Assessment accompanying the document Proposals for a Council Directive on a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB)', [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/swd\\_2016\\_341\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/swd_2016_341_en.pdf).
19. See at [https://ec.europa.eu/taxation\\_customs/business/vat/action-plan-vat/single-vat-area\\_en](https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/single-vat-area_en).
20. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT, 'Towards a single EU VAT area - Time to decide', COM(2016) 148 final, 7 September 2016.
21. Standard Eurobarometer 89 (2018), Europeans and the future of Europe, at 42 <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/83543>.
22. Judgment of 12 February 2015, *Sähköalojen ammattiliitto ry v Elektrobudowa Spółka Akcyjna*, C-396/13.
23. Judgment of 17 November 2015, *RegioPost GmbH & Co. KG v Stadt Landau in der Pfalz*, C-115/14.
24. Judgment of 17 March 2015, *Auto- ja Kuljetusalan Työntekijäliitto AKT ry v Öljytuote ry and Shell Aviation Finland Oy*, C-533/13.