

The European Commission work programme for 2019 includes an initiative to explore possibilities to switch from unanimous-based voting to qualified majority voting (QMV) in EU social policy making by the Member States in the Council. The procedural mechanism which the European Commission envisages for this switch relates to a so-called Passerelle Clause which the EU Treaties specify and according to which the Member States may, upon a proposal by the European Commission, decide by unanimity to transition future decision making in the Council in specified fields – such as parts of social policy – from unanimity to qualified majority voting and from a special legislative procedure to the ordinary legislative procedure.

One of the key consequences of a change from unanimous voting to QMV in the Council is that decision-taking can no longer be blocked unilaterally and, often, egoistically by single Member States. Politically, thus, the lowest common denominators needed for decisions can, in theory, be raised, which means that this could pave the way for more ambitious legislation in the social field, leading to higher minimum standards. With the EU being an supranational integration project, QMV would help take effective European approaches and decisions in the common interest.

Moving from a special legislative (e.g. consultation) procedure to the ordinary legislative (i.e. co-decision) procedure means that the European Parliament becomes a real co-legislator on an equally powerful footing with the Member States in the Council, instead of being just consulted. In the past, the European Parliament has often shown to be more socially progressive and ambitious than many Member States in the Council. An introduction of the ordinary legislative procedure in EU social policy may therefore promise more socially ambitious EU legislation.

The recent proposal of the European Commission for a legally non-binding, loose Council Recommendation on access to social protection (with the Council as sole decision-taker and voting by unanimity) is an example of a file that could have been more easily a proposal for a binding Directive with teeth (falling under the ordinary legislative procedure), had a Passerelle Clause been made use of already.

Notwithstanding the undoubtedly high quality content of the proposal, its legal status of a non-binding Council Recommendation means it is at high risk of becoming a paper tiger of very limited impact. According to CESI, it appears that the European Commission refrained from tabling a Directive precisely it anticipated that there would be no unanimous support in the Council for binding rules and the file would therefore be dead from the beginning.

CESI therefore believes that QMV and the ordinary legislative procedure should be introduced in as many social policy subfields as is possible under the EU Treaties' passerelle clause provisions, namely: 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).

While being aware of the competences and prerogatives of the Member States in social affairs, moving on to QMV and the ordinary legislative procedure in social policy would also respond to the need long advocated by trade unions to complement the advanced economic integration and the completion of the EU single market with a real social dimension which responds to permanently evolving realities on the labour market. More and more flexible, mobile and digital work and the spread of -mostly still unregulated- new forms of employment across borders in the EU necessitate certain binding and ambitious minimum social standards for workers and employees beyond national legal orders. This is in the spirit of the 'Triple Social A-Ranking for the EU which President Juncker announced at start of his mandate and must be an essential feature of the implementation of the European Pillar of Social Rights. Delivering on this is also vital to maintain the citizens' trust in institutions which are capable of responding to the concrete needs of the citizens, which clearly are of social nature at the European level as well. Effective EU policy making is therefore in the end not only in the interest of the EU but also of that of the Member States.

For reasons specified at the outset, CESI therefore advocates a transition to QMV in the Council and to the ordinary legislative procedure in those fields of social policy that this can be applied to under the Treaties.