



European Economic and Social Committee

SOC/626
Passerelle clause

OPINION

European Economic and Social Committee

**Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions –
More efficient decision-making in social policy: Identification of areas for an enhanced move to
qualified majority voting
[COM(2019) 186 final]**

Rapporteur: **Christian Bäumler**

Consultation	European Commission, 17/04/2019
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	10/09/2019
Adopted at plenary	25/09/2019
Plenary session No	546
Outcome of vote (for/against/abstentions)	83/32/1

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) stresses that in times of rapid change it is crucial for the EU, together with its Member States, to be able to adopt efficient and effective policy measures in all relevant policy areas in line with the recognised competences. This approach should include a related discussion on the need for action at European level, with due regard to the principle of subsidiarity.
- 1.2 The EESC believes that the involvement of the European Parliament at a high level, in line with the provisions of the Treaty, is important in the legislative process, including in particular in the area of social policy, as social policy issues affect social cohesion and a highly competitive social market economy, in accordance with the objectives set out in the Treaty (Article 3 TEU).
- 1.3 Considering that the EESC has in previous opinions¹ already argued for unanimity requirements at EU level to be reviewed and recently reiterated this particularly in the area of taxation policy,² it welcomes the fact that the Commission is driving the discussion on existing barriers in legislation and in this communication has started the discussion on possibilities of extending qualified majority voting in the area of social policy. The EESC at the same time stresses that the Treaty-based role of the EU in the social policy area is to support and complement the activities of the Member States in the fields defined by Art 153(1) TFEU. This reflects the diversity of national social systems and traditions and implies the leading role of the Member States in designing and implementing their actions in the field of social policy and labour markets. The qualified majority procedure is based on a culture of compromise.
- 1.4 For the EESC, it is clear that also when using qualified majority voting, the EU remains committed to the subsidiarity principle and, in areas where it does not have exclusive competence, concentrates on areas in which shared objectives cannot be achieved more effectively at national, regional or local level. The same applies to the principle of proportionality, according to which the content and form of EU measures must not go beyond the objectives set out in the Treaties.
- 1.5 Article 151 TFEU establishes the objective of social policy as "the promotion of employment, improved living and working conditions [...] while the improvement is being maintained". The EESC stresses that, in accordance with Article 153(2) TFEU, this is to be pursued with directives on minimum rules, taking into account national circumstances, and these must not hamper the creation and development of small and medium-sized enterprises. It further stresses that, in accordance with Article 153(4) TFEU, the right of Member States to feel committed to a higher level of national protection, and the power of the Member States to determine the principles of their social security systems – whatever the voting method – should not be affected.

¹ See these EESC opinions: [OJ C 230, 14.7.2015, p. 24](#); [OJ C 434, 15.12.2017, p. 18](#); [OJ C 271, 19.9.2013, p. 23](#); [OJ C 332, 8.10.2015, p. 8](#).

² [ECO/491 – Taxation – qualified majority voting](#) (not yet published in the Official Journal).

- 1.6 The EESC stresses that the agreements concluded by the social partners and implemented at EU level make an important contribution to developing EU legislation in the area of social policy. In the light of the debate on the possible transition from the unanimity procedure to qualified majority voting, it calls for guarantees that the social partners will continue to be fully involved in policy making, including social policy making, and that their autonomy in the implementation and potential revision of their autonomous agreements will be respected.
- 1.7 The EESC notes that, within a given policy area, decisions are currently subject to either unanimity or qualified majority voting. This leads to inequality in the development of social standards and to gaps in social protection. The EESC therefore supports a full transition to qualified majority voting for legislation in the area of non-discrimination and for recommendations on social security and protection of workers.
- 1.8 The EESC also points out that the EU has developed measures to protect vulnerable workers, such as pregnant women and part-time workers, when employment has terminated. This calls for a minimum set of procedural and protection rights to be guaranteed at European level and for a transition to qualified majority voting.
- 1.9 The EESC stresses that the representation and collective management of the interests of employers and employees are crucial for the cohesion of society, the retention and creation of good jobs and the competitiveness of EU businesses. Here, too, the EU must, as far as is objectively necessary, examine to what extent qualified majority voting can boost opportunities for developing the social partnership in a future-oriented way.
- 1.10 The EESC recommends moving to qualified majority voting for the employment conditions of third-country nationals legally residing in the EU, to avoid unequal treatment and to bolster social cohesion.
- 1.11 In the context of the ongoing debate on the transition to qualified majority voting, the EESC agrees with the considerations of the Commission with regard to opting for the general "passerelle clause" set out in Article 48(7) TEU in cases where qualified majority voting is applied, as this requires both a unanimous decision by the European Council and the support of all national parliaments and the consent of the European Parliament, thereby providing broad democratic legitimacy.

2. General comments

- 2.1 The EESC shares the Commission's view that the EU and all its Member States face common challenges concerning the impact of new technologies, increasing competitive pressure in the globalised economy, new forms of work, and demographic trends. In order to preserve and develop the European social model for future generations, measures are needed at European and national level across a wide range of policy areas, in line with the recognised competences. Measures to strengthen social cohesion and social inclusion, as well as to counter discrimination are important in this ambit.

- 2.2 The EESC stresses that in times of rapid change it is crucial for the EU, together with its Member States, to be able to adopt efficient and effective policy measures. This should include an appropriate examination of whether and at what level action is necessary, giving due consideration to the subsidiarity principle, and the choice of suitable tools and efficient decision-making processes, through which the EU is able to support and complement national policies. This should involve analysing in detail the impact on the economy, public finances and the role of the social partners in each Member State. All Member States must at all times have sufficient opportunities to be involved in decision-making. The common goal should be to achieve good results both at EU level and in individual Member States.
- 2.3 The EESC stresses that the EU needs an efficient and flexible decision-making process to ensure that legislation and non-binding instruments, such as coordination frameworks and recommendations, can keep pace with economic and social developments. Considering that the EESC has, in previous opinions, already argued for the unanimity requirements in EU law-making to be reviewed,³ it welcomes the fact that the Commission is driving the discussion on existing barriers in policy making and, in this communication, has also launched the discussion on possibilities of extending qualified majority voting in the area of social policy. The EESC at the same time stresses that the Treaty-based role of the EU in the social policy area is to support and complement the activities of the Member States in the fields defined by Art 153(1) TFEU. This reflects the diversity of national social systems and traditions and implies the leading role of the Member States in designing and implementing their actions in the field of social policy and labour markets.
- 2.4 In the EESC's view, according to the Treaties the EU's role is to support the activities of the EU Member States and complement them in the areas set out therein (Article 153(1) TFEU). This reflects the variety of national social systems and traditions, and implies that Member States have a leading role to play and a high degree of sovereignty in European cooperation when it comes to devising and implementing measures in the area of social policy and labour markets.
- 2.5 The EESC stresses that the majority of EU legislation on social policy has been adopted using qualified majority voting and the ordinary legislative procedure.
- 2.6 However, the EESC points out that, in contrast, according to the Treaty on European Union a certain number of social policy areas continue to require unanimity in the Council: non-discrimination (Article 19(1) TFEU); social security and social protection of workers (except for the purpose of free movement of workers) (Article 153(1)(c) TFEU); protection of workers where their employment contract is terminated (Article 153(1)(d) TFEU); representation and collective defence of the interests of workers and employers (Article 153(1)(f) TFEU) and conditions of employment for third-country nationals legally resident in Union territory (Article 153(1)(g) TFEU). While Article 19 TFEU provides for the consent of the European Parliament to be obtained, this is not the case for Article 153(1)(c), (d), (f) and (g).
- 2.7 The EESC believes that the involvement of the European Parliament at a high level, in line with the provisions of the Treaty, in the legislative process is important, in particular in the area of

³ See footnote 2.

social policy, as social policy issues involve decisions that directly impact ordinary people and affect social cohesion and a highly competitive social market economy, in accordance with the objectives set out in the Treaty (Article 3 TEU).

- 2.8 The EESC welcomes the fact that, in this communication, the Commission has also launched the discussion on extending decision-making by qualified majority in the area of social policy, as is the case particularly in the area of taxation policy⁴. The qualified majority procedure is based on a culture of compromise. It presupposes a debate and enables pragmatic results to be achieved that take account of the interests of the EU as a whole. The prospect of qualified majority voting acts as a catalyst for finding a solution that is acceptable to all parties, by involving all stakeholders in pursuit of a compromise.
- 2.9 The EESC points out that in its new Strategic Agenda 2019-2024 the EU has committed itself to implementing the Pillar of Social Rights at EU and Member State level. In this connection, due attention should be paid to each level's respective responsibilities.
- 2.10 For the EESC, it is essential that when using qualified majority voting, the EU remains committed to the subsidiarity principle and, in areas where it does not have exclusive competence, concentrates on areas in which shared objectives cannot be achieved more effectively at national, regional or local level. The same applies to the principle of proportionality, according to which the content and form of EU measures must not go beyond the objectives set out in the Treaties. These principles should be clarified when discussing qualified majority voting.
- 2.11 Article 151 TFEU establishes the objective of social policy as "the promotion of employment, improved living and working conditions [...] while the improvement is being maintained". The EESC stresses that Article 153(2) TFEU sets out criteria that pertinent EU measures in the area of social policy must fulfil. For example, directives primarily include minimum rules, taking into account national circumstances, and are not supposed to hamper the creation and development of small and medium-sized enterprises. The EESC stresses that the right of Member States to feel committed to a higher level of national protection, and the right of the Member States to determine the principles of their social security systems – whatever the voting method – must not be affected.
- 2.12 The EESC also notes that in the preamble to the European Pillar of Social Rights the Commission, the EP and the Council confirmed that account should be taken of the diversity of national systems, including the role of the social partners (point 17) as well as of the Member States' national identities and their right to define the fundamental principles of their social security systems (point 19).
- 2.13 The EESC stresses that the agreements concluded by the social partners and implemented at EU level under art. 155 make an important contribution to developing EU legislation in the area of social policy. It welcomes the fact that, according to the communication, the social dialogue outcomes and directives enjoy equal treatment in terms of being adopted. For the possible

⁴ See footnote 1.

transition from the unanimity procedure to qualified majority voting, it calls for guarantees that the social partners will continue to be fully involved in policy making, including social policy making, and that their autonomy in the implementation and potential revision of their autonomous agreements will be respected. Social dialogue plays an important role in social protection. It also delivers social progress in the EU through autonomous legislation.

- 2.14 The EESC agrees with the Commission and believes that the enhanced cooperation tool does not provide an alternative to qualified majority voting. The enhanced cooperation tool may lead to fragmentation of the single market and to EU citizens being treated differently depending on the Member State in which they live, particularly when it comes to social policy issues.
- 2.15 On the other hand, the EESC believes that the European Semester is another effective and useful tool for achieving more and better convergence and making progress in national reforms, with the support and guidance of the Member States and the social partners, not least through "shared learning". This also respects the letter and spirit of Article 156 TFEU. The EESC highlights the efforts made as part of the European Semester to develop improved methods for coordinating national employment and social protection policy and reform, and at the same time to include the national social partners effectively in the work of the EU. The European Pillar of Social Rights, which serves as a guide for reforms, would therefore contribute to establishing a roadmap for better convergence and greater cohesion between the Member States.

3. Specific comments

- 3.1 The EESC notes that, within a given policy area, decisions are currently subject to unanimity or qualified majority voting. This leads to inequality in the development of social standards and to gaps in social protection.
- 3.2 The EESC points out that there is extensive EU legislation implementing the principle of equality between men and women and equal treatment on grounds of racial or ethnic origin, among other things. This is a major success story of the EU, which is also an international standard setter in this area. However, EU law only ensures equal treatment on grounds of religion or belief, disability, age or sexual orientation in the context of employment and occupation. A directive comprehensively prohibiting discrimination in the EU would be extremely complex and therefore unlikely to be achievable through unanimity voting. However, the EU has made a commitment to this end under the 2030 Sustainable Development Agenda. This objective has been bolstered by the new Strategic Agenda 2019-2024. The EESC supports a full transition to qualified majority voting for legislation on non-discrimination.
- 3.3 The EESC draws attention to the fact that, in accordance with Article 48 TFEU, the EU may act by a qualified majority to adopt measures in the field of social security for the purpose of providing free movement of workers. On the other hand, unanimity is required for recommendations on social security and worker protection. Transitioning to qualified majority voting would be logical and appropriate. The question also arises as to why the Commission does not consider more extensive legal tools here, instead of limiting itself to the goal of making recommendations.

- 3.4 The EESC recognises that protecting workers in the event of dismissal has always been a key feature of national labour law. However, the EESC also recognises that the EU has now developed measures to protect vulnerable workers, such as pregnant women and part-time workers. This calls for at least a minimum set of procedural and protection rights to be guaranteed at European level in order to ensure that these safeguards do not prove ineffective. The European Pillar of Social Rights provides for rights to information for workers who have been made redundant, and for access to effective and impartial dispute settlements, remedies and compensation where applicable. This calls for a transition to qualified majority voting to enable such a directive to be implemented.
- 3.5 The EESC stresses that it is crucial to have a sound legal framework for the representation and collective management of employer and employee interests for the cohesion of society, the creation of high-quality jobs and the competitiveness of EU businesses. Businesses in the single market are working more and more closely together at cross-border level. The Directive on the establishment of a European Works Council, which was adopted under the ordinary legislative procedure, applies to undertakings and groups of undertakings in the EU. In contrast, unanimity continues to apply in other areas of EU law on employee participation. Here, too, the EU must, as far as is objectively necessary, examine to what extent qualified majority voting opens up new opportunities for a future-oriented social partnership.
- 3.6 The EESC recommends moving to qualified majority voting for the employment conditions of third-country nationals legally residing in the EU. The employment conditions of EU and non-EU nationals must be consistent if social cohesion is not to be compromised.
- 3.7 In the context of the ongoing debate on the transition to qualified majority voting, the EESC agrees with the considerations of the Commission with regard to opting for the general "passerelle clause" set out in Article 48(7) TEU, in cases where qualified majority voting is applied, as this requires both a unanimous decision by the European Council and the support of all national parliaments and the consent of the European Parliament. This would ensure broad democratic legitimacy and meet constitutional requirements at national level. This would not be true in the case of the "passerelle" via Article 153 TFEU.
- 3.8 The EESC notes that a question remains unanswered by the Commission communication. It is not clear whether the decision to transfer a certain legal base from unanimity to qualified majority voting is taken once and for all or on a case-by-case basis. The EESC asks the Commission to clarify whether the use of the general "passerelle clause" in Article 48(7) TEU involves a blanket transition to qualified majority voting or case-by-case decisions. Whichever the case, the EESC contends that it must be ensured that the use of the "passerelle clause" results in more efficient deliberations and decision-making and does not create any further obstacles.

Brussels, 25 September 2019

Luca Jahier

The president of the European Economic and Social Committee

*

*

*

N.B.: Appendix overleaf

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 59 (3) of the Rules of Procedure):

1. Point 2.8

Amend as follows:

The EESC welcomes the fact that, in this communication, the Commission has taken the initiative to open the debate and explain how a shift to ~~also launched the discussion on extending~~ decision-making by qualified majority in the area of social policy could look without precipitous proposals, ~~as is the case particularly in the area of taxation policy~~⁵. ~~The qualified majority procedure is based on a culture of compromise. It presupposes a debate and enables pragmatic results to be achieved that take account of the interests of the EU as a whole. The prospect of qualified majority voting acts as a catalyst for finding a solution that is acceptable to all parties, by involving all stakeholders in pursuit of a compromise.~~

Outcome of the vote:

In favour: 36

Against: 74

Abstentions: 2

2. New point after 2.8

Add a new point after 2.8:

On the other hand, the rationale of unanimity in the decision-making is based on the need to preserve national control of relevant provisions of social policy in the EU Treaty and prevent intrusion into core elements of national social systems for which the Member States together with social partners are responsible in the first instance.

Outcome of the vote:

In favour: 31

Against: 82

Abstentions: 3

⁵ — See footnote 1.

3. Point 3.1

Amend as follows:

The EESC notes that, within a given policy area, decisions are currently subject to unanimity or qualified majority voting. The EESC finds that the apportionment between qualified majority voting and unanimity laid down in the social chapter of the EU Treaty is still relevant as it reflects the diversity and heterogeneity of the national social systems of the Member States e.g. in social protection, regarding the role of social partners and regarding the role of labour law and collective agreements. This leads to inequality in the development of social standards and to gaps in social protection.

Outcome of the vote:

In favour: 32

Against: 74

Abstentions: 3

4. Point 3.2

Amend as follows:

The EESC points out that there is extensive EU legislation implementing the principle of equality between men and women and equal treatment on grounds of racial or ethnic origin, among other things. This is a major success story of the EU, which is also an international standard setter in this area. However, EU law only ensures equal treatment on grounds of religion or belief, disability, age or sexual orientation in the context of employment and occupation. These directives were adopted unanimously. A directive comprehensively prohibiting discrimination in the EU would be extremely complex, which explains the long procedure and slow progress and therefore unlikely to be achievable through unanimity voting. However, the EU has made a commitment to this end under the 2030 Sustainable Development Agenda. This objective has been bolstered by the new Strategic Agenda 2019-2024. ~~The EESC supports a full transition to qualified majority voting for legislation on non-discrimination.~~

Outcome of the vote:

In favour: 31

Against: 78

Abstentions: 2

5. Point 3.4

Delete as follows:

~~*The EESC recognises that protecting workers in the event of dismissal has always been a key feature of national labour law. However, the EESC also recognises that the EU has now*~~

~~developed measures to protect vulnerable workers, such as pregnant women and part time workers. This calls for at least a minimum set of procedural and protection rights to be guaranteed at European level in order to ensure that these safeguards do not prove ineffective. The European Pillar of Social Rights provides for rights to information for workers who have been made redundant, and for access to effective and impartial dispute settlements, remedies and compensation where applicable. This calls for a transition to qualified majority voting to enable such a directive to be implemented.~~

Outcome of the vote:

In favour: 35

Against: 77

Abstentions: 2

6. Point 3.5

Amend as follows:

~~The EESC stresses that it is crucial to have a sound legal framework for the representation and collective management of employer and employee interests for the cohesion of society, the creation of high quality jobs and the competitiveness of EU businesses. Businesses in the single market are working more and more closely together at cross border level. The Directive on the establishment of a European Works Council, which was adopted under the ordinary legislative procedure, applies to undertakings and groups of undertakings in the EU. In contrast, unanimity continues to apply in other areas of EU law on employee participation. Here, too, the EU must, as far as is objectively necessary, examine to what extent qualified majority voting opens up new opportunities for a future oriented social partnership.~~

Outcome of the vote:

In favour: 34

Against: 84

Abstentions: 2

7. Point 3.6

Delete as follows:

~~The EESC recommends moving to qualified majority voting for the employment conditions of third country nationals legally residing in the EU. The employment conditions of EU and non-EU nationals must be consistent if social cohesion is not to be compromised.~~

Outcome of the vote:

In favour: 30

Against: 85

Abstentions: 1

8. Point 1.7

Amend as follows:

~~The EESC notes that, within a given policy area, decisions are currently subject to either unanimity or qualified majority voting. This leads to inequality in the development of social standards and to gaps in social protection. The EESC therefore supports a full transition to qualified majority voting for legislation in the area of non discrimination and for recommendations on social security and protection of workers. The EESC finds that the apportionment between qualified majority voting and unanimity laid down in the social chapter of the EU Treaty is still relevant as it reflects the diversity and heterogeneity of the national social systems of the Member States e.g. in social protection, regarding the role of social partners and regarding the role of labour law and collective agreements.~~

Outcome of the vote:

In favour: 32

Against: 74

Abstentions: 3

9. Point 1.8

Delete as follows:

~~The EESC also points out that the EU has developed measures to protect vulnerable workers, such as pregnant women and part time workers, when employment has terminated. This calls for a minimum set of procedural and protection rights to be guaranteed at European level and for a transition to qualified majority voting.~~

Outcome of the vote:

In favour: 36

Against: 81

Abstentions: 1

10. **Point 1.10**

Delete as follows:

~~*The EESC recommends moving to qualified majority voting for the employment conditions of third country nationals legally residing in the EU, to avoid unequal treatment and to bolster social cohesion.*~~

Outcome of the vote:

In favour: 30

Against: 85

Abstentions: 1
