The Commission's initiative on the passerelle clauses – Exploring the unused potential of the Lisbon Treaty

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Abstract

The Treaty of Lisbon introduced general and special passerelle or bridging clauses into primary law. They can be used to alter voting arrangements from unanimity to qualified majority in the Council or from a special to the ordinary legislative procedure. This is to enable a shift to more supranational decision-making without the need for a full-fledged treaty revision. The European Parliament called on the European Council and the Council to make use of the passerelle clauses, also to involve Parliament as a co-legislator under the ordinary legislative procedure. The former Commission had started a discussion on the use of the passerelle clauses in four policy areas and it appears that the incumbent Commission President has endorsed this ambitious project. This article aims to explore the potential and the shortcomings of the bridging clauses as part of the unused potential of the Lisbon Treaty and discusses the enhanced cooperation procedure as a possible alternative.

Keywords: EU law, EU constitutional law, passerelle clauses, bridging clauses, Lisbon Treaty

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A. Introduction

Amendments to international treaties are cumbersome, as they usually require unanimous agreement by all Member States and their national Parliaments for ratification. The European Treaties since Lisbon allow for simplified revision procedures that enable smaller changes to be effectuated without the lengthy, ordinary procedure. One of these are the so called *passerelles* or bridging clauses. While bridging clauses are no invention of the Constitutional Convention or the following Treaty of Lisbon,[1] the introduction of a general *passerelle* and several sector-specific clauses considerably broadens the scope of application of this instrument. These clauses allow the European Council or the Council, as the case may be, to adopt a decision stipulating that, in cases, where the Treaties provide for the Council to vote by unanimity, qualified majority shall apply or that in cases where the Treaties provide for the application of a special legislative procedure, henceforth the ordinary legislative procedure shall apply. It is a simplified revision procedure in that an act of secondary law can alter voting procedures in the Treaties without the need to have recourse to the ordinary treaty amendment procedure.

After initial enthusiasm during the negotiations leading to the Lisbon Treaty, the *passerelle* clauses have fallen into a state of hibernation (both in practice and academia) after the Treaty of Lisbon entered into force. In 2014 the European Parliament launched an own-initiative procedure leading to its resolution of February 2017 entitled "Improving the functioning of the European Union building on the potential of the Lisbon Treaty".[2] Based on the assumption that the provisions of the Lisbon Treaty "have not yet been exploited to their full potential",[3] the European Parliament called on the European Council and the Council to make use of the *passerelle* clauses in the Treaties, not only to switch to qualified majority voting in the Council, but also to involve Parliament as a co-legislator under the ordinary legislative procedure.[4]

In the section on "A Stronger Union", Commission President *Jean-Claude Juncker* in his 2017 State of the Union Address advocated the use of the bridging clauses especially in the area of tax and foreign policy.[5] These plans were reiterated in the 2018 State of the Union Address.[6] Following up on the President's remarks, the Commission presented communications on the activation and use of the *passerelle* clauses in four areas: common foreign and security policy[7] (CFSP) (September 2018),

1 On the genesis, see *Böttner and Grinc*, pp. 13 ff.
2 *European Parliament*, resolution of 16/02/2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), P8_TA(2017)0049.
3 P8_TA(2017)0049, consideration C.
4 See P8_TA(2017)0049, points 27, 33, 102 and 135.
5 State of the Union Address, Brussels, 13/09/2017, available at: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm (01/07/2019).
6 State of the Union Address, Strasbourg, 12/09/2018, available at: http://europa.eu/rapid/press-release_SPEECH-18-5808_en.htm (01/07/2019).
7 *European Commission*, A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy, Brussels, 12/09/2018, COM(2018) 647 final.

taxation[8] (January 2019), energy and climate[9] (April 2019), and social policy[10] (April 2019). It appears that the new Commission under President *Ursula von der Leyen*, who took office on December 1st, 2019, has endorsed this ambitious project. The mission letters for Commissioner for Economy, *Paolo Gentiloni*,[11] for Commissioner for Energy, *Kadri Simson*,[12] and the High Representative for the CFSP, *Josep Borrell Fontelles*,[13] commit the Commissioners to "make full use of the clauses in the Treaties" that allow proposals on taxation, energy, and the CFSP "to be adopted by qualified majority voting".

The present article aims to analyse these communications with regard to their scope of application, decision-making in these fields and the procedures applicable for the activation of the general or a specific bridging clause. It will then point to certain aspects of the bridging clauses' constitutional framework in order to shed light on their potential, but also their practical limits, and possible alternatives. It tries to contribute to the debate by examining the potentials of the bridging clauses and revealing that there are sufficient safeguards for reluctant Member States to save them from being outnumbered and outvoted against their will.

B. Policy areas covered by the Commission's initiative

I. Common Foreign and Security Policy

The first of the four communications deals with decision-making in the Common Foreign and Security Policy. The document is characterised by the Commission's intention to make the European Union a stronger global actor, to make it '*weltpolitikfähig*', *i.e.* increase its capacity to act credible on the global stage,[14] which is necessary for the Union to face the many challenges at the global level. This, however, requires that decision-making in foreign policy be made more efficient.

As a general rule, decisions in CFSP are taken by the European Council and the Council, which act by unanimity (sentence 1 of Article 31(1)(1) TEU). This reflects

8 *European Commission*, Towards a more efficient and democratic decision making in EU tax policy, Strasbourg, 15/01/2019, COM(2019) 8 final.

9 *European Commission*, A more efficient and democratic decision making in EU energy and climate policy, Brussels, 09/04/2019, COM(2019) 177 final.

10 *European Commission*, More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting, Strasbourg, 16/04/2019, COM(2019) 186 final.

11 https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-paolo-gentiloni_en.pdf (01/07/2019).

12 https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-kadri-simson_en.pdf (01/07/2019).

13 https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-josep-borrell-2019_en.pdf (01/07/2019).

14 Cf. *Jean-Claude Juncker*, speech delivered at the 54th Munich Security Conference, Munich, 17/02/2018, German version available at: http://europa.eu/rapid/press-release_SPEECH-18-841_de.htm (01/07/2019).

the international and intergovernmental character of the Union's foreign policy.[15] While acknowledging that unanimous decision-making in CFPS works well in a large number of cases, the Commission points out numerous cases where unanimity prevented CFSP decisions or substantially delayed or negatively impacted their substance in the field of human rights, foreign policy statements or EU sanctions.

While French and German proposals to make qualified majority voting the default voting rule also in CFSP[16] did not succeed, the Treaty of Lisbon recognises specific areas in which the Council takes decisions by qualified majority (Article 31(2)(1) TEU; as long as these decisions do not have military or defence implications, Article 31(4) TEU), for example when adopting or implementing a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives. Furthermore, Article 31(1)(2) TEU provides for the cases of "qualified abstention", which allows a Member State to abstain from a vote without preventing the decision to be adopted; the Member State will not be obliged by that decision.[17] These points indicate that CFSP since Amsterdam is no longer a purely intergovernmental area.[18] As "in international politics, time is of the essence and the credibility of an international actor hinges on its ability to react in a quick and coherent way to international crises and events",[19] the Commission wishes to extend qualified majority voting to other areas of foreign policy. On the one hand, it suggests exploiting the potential of existing qualified majority voting under Article 31(2) TEU. On the other hand, it proposes the use of the *passerelle* clause of Article 31(3) TEU.

Article 31(3) TEU provides that the European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of the same Article. While this provision seems straightforward for the application to the CFSP chapter of Title V of the TEU, it is striking that Article 48(7)(1) TEU for its part provides that this general *passerelle* should also apply to Title V of the TEU, but with a different procedure (participation of the national Parliaments and the European Parliament). I have discussed this issue in more detail elsewhere.[20]

In its communication, the Commission explores three areas in which it proposes using the bridging clause in order to enhance CFSP decision-making:

(1) EU positions on human rights in multilateral fora: the universality and indivisibility of human rights are principles that shall guide the Union's action on the international scene (cf. Article 21(1) TEU). Common positions are adopted by the Council by common accord. The Commission refers to a situation in June 2017 where the

15 *Böttner/Wessel*, in Blanke/Mangiameli (eds.),Article 31, para. 8.
16 Amendments No. 6 (de Villepin) and No. 10 (Fischer), CONV 707/03 (9 May 2003), p. 60.
17 *Böttner/Wessel*, in: Blanke/Mangiameli (eds.), Article 31, paras 16 ff. Qualified abstention has been used only once when Cyprus made a formal declaration with regard to Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ L 42/92 (2008); cf. *Bendiek et al*., p. 4.
18 *Marquardt/Gaedtke*, in: Groeben et al. (eds.), Artikel 31 EUV, para. 2; *Böttner*, p. 516.
19 *European Commission,* COM(2018) 647 final, pp. 2 f.
20 See *Böttner*, European Constitutional Law Review 2016/12, pp. 511 ff. ; *Böttner/Grinc*, pp. 46 ff.

Union was unable to deliver a so called Item 4 Statement at the UN Human Rights Council due to the objections of some Member States. Adopting positions by qualified majority could prevent those deadlocks.

(2) Adoption and amendments of EU sanction regimes: The Commission describes two situations in 2017 when a single EU Member State blocked the adoption of EU sanctions until they were essentially watered down due to the unanimity requirement. As sanctions policy is "one of the EU's strongest foreign and security policy tools",[21] qualified majority should prevent blockades to the EU's ability to react quickly and firmly to international developments.

(3) Civilian Common Security and Defence Policy: As the Commission explains, in 2018 a situation occurred in which one Member State's consent to a capacity building mission was given only after another Member State dropped his objections to a different mission. Crisis and post-crisis measures and support often require quick and swift action which is hampered by the unanimity requirement.

As is well known, the foreign and security policy is a sensitive field to national sovereignty, hence the default voting rule of unanimity among the Member States.[22] However, the rules on CFSP provide mechanisms to safeguard national sovereignty even where decisions can be taken by qualified majority. In addition to the above-mentioned qualified abstention under Article 31(1)(2) TEU, paragraph 2(2) of the same Article (the so called "emergency brake") stipulates that a Member State can declare that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority. In this case a vote shall not be taken and the High Representative shall search for a solution, failing which the matter is referred to the European Council for unanimous decision. This provision not only applies to cases where qualified majority voting is foreseen already in the Treaties, but also to qualified majority voting under a *passerelle*.[23] In addition, qualified majority voting (not even under a *passerelle*) shall not be possible for decisions having military or defence implications (Article 31(4) TEU).[24]

II. Taxation

Taxation is one of the areas which tap most strongly into national sovereignty. Raising taxes is the primary source of revenue and funding of societies. This is why the Member States have guarded this part of national sovereignty with the possibility of vetoing EU decisions in tax matters. Taxation is the last remaining policy area which exclusively relies on unanimous decision-making (see Articles 113, 115, 192(2), and 194(3) TFEU). On the other hand, tax policy is an important element in building the Internal Market, which becomes ever more relevant as cross-border business and investment

21 *European Commission,* COM(2018) 647 final, p. 12.
22 *Böttner/Wessel*, at para. 1; *Bendiek et al.*, pp. 2 f.
23 *Kaufmann-Bühler/Meyer-Landrut*, in: Grabitz et al. (eds.), Artikel 31 EUV, para. 38; *Böttner/Wessel*, para. 41; *Rathke*, in: Arnauld/Hufeld (eds.), IntVG, EUZBBG, EUZBLG, § 7 para. 154; *European Commission,* COM(2018) 647 final, p. 10.
24 On this notion see *Böttner/Wessel*, paras 50-53.

is facilitated by globalisation and digitalisation. This increases requirements for swift and effective EU decision-making in this policy area, which is hampered by the need to have every Member State's positive vote. The Commission mentions the struggles in adopting a Common Consolidated Corporate Tax Base or the Standard VAT Return as most blatant examples of this short-coming.[25] At the same time, the Commission estimates the costs of non-action in EU tax policy due to the unanimity requirement to several tens of billion euros per year.[26] In addition, the horizontal character of taxation affects policy making in a whole range of other areas, notably environmental, climate, and energy policy (see infra B.III).

Recognising the limited scope of flexibility in tax matters enshrined in the Treaties (most notably Article 116 TFEU on eliminating distortions of competition due to different tax rules and Article 325 TFEU on combatting fraud), the Commission proposes a roadmap for gradually adopting qualified majority voting in different tax-related areas, beginning with (1) measures that have no direct impact on Member States' taxing rights, but which are critical for combatting tax fraud over (2) measures of a fiscal nature supporting other policies and (3) areas which are already largely harmonised to (4) remaining tax areas which are necessary for the Single Market.[27] The instruments of choice are the general *passerelle* clauses in Article 48(7) TEU, according to which the European Council can unanimously decide to shift from unanimity to qualified majority voting in the Council or to change from a special to the ordinary legislative procedure with equal rights for the European Parliament and qualified majority voting in the Council. The European Parliament must give its consent by the majority of its component members and each national Parliament has the opportunity to veto an initiative within six months of the proposal. This instrument could be used to change the special legislative procedure foreseen by Articles 113 and 115 TFEU in tax matters to the ordinary legislative procedure.

III. Energy and Climate Policy

The Energy Union was one of the priority projects of the Juncker Commission[28] and energy and climate policy are vital pillars of the current Commission's European Green Deal. It aims to provide secure, sustainable and climate neutral, competitive and affordable energy.[29] Energy policy is not a stand-alone issue but instead is heavily intertwined with environmental and financial matters. This is why the Commission it its third communication on the use of the *passerelle* clauses considers not only the

25 See *European Commission*, COM(2019) 8 final, pp. 3 f.
26 *European Commission,* COM(2019) 8 final, p. 4.
27 See *European Commission,* COM(2019) 8 final, pp. 11 f.; *Luts*, pp. 33 f.
28 https://ec.europa.eu/commission/priorities/energy-union-and-climate_en (11/07/2019).
29 See *European Commission,* COM(2019) 177 final, p. 1, as well as in more detail the Communication of the *European Commission*, A Clean Planet for all, Brussels, 28/11/2018, COM(2018) 773 final and the accompanying in-depth analysis. See also the *European Commission*, Fourth Report on the State of the Energy Union, Brussels, 09/04/2019, COM(2019) 175 final.

Treaty provisions on energy policy (Article 194 TFEU), but also environmental policy (Articles 191-193 TFEU) and taxation[30] (Article 113 TFEU, supra B.II). One should also keep in mind the internal market competence under Article 114 TFEU.

On the basis of Article 192(1) TFEU, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives of the Union's environmental policy laid down in Article 191 TFEU. By way of derogation from this general rule, the Council acting unanimously and after consulting the European Parliament and the advisory committees, shall adopt certain measures in accordance with a special legislative procedure (Article 192(2)(1) TFEU). These include provisions primarily of a fiscal nature (lit. a), measures affecting town and country planning, quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, and land use, with the exception of waste management (lit. b), as well as measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply (lit. c).

In energy policy, under Article 194(1) TFEU the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consultation of the advisory committees, shall establish the measures necessary to achieve the objectives of ensuring the functioning of the energy market (lit. 1), ensuring security of energy supply in the Union (lit. b), promoting energy efficiency and energy saving and the development of new and renewable forms of energy (lit. c), and promoting the interconnection of energy networks[31] (lit. d). Again, a special legislative procedure shall apply for measures when they are primarily of a fiscal nature (Article 194(3) TFEU).

Generally, when measures tap into different policy fields, the appropriate legal basis is determined based on the main topic of the measure with regard to the nature of the rules adopted and the objectives pursued with said measure.[32] If it is equally based on two provisions, then both serve as legal basis.[33] This is excluded, however, if the two legal bases require different procedures, for example the ordinary legislative procedure under one legal basis and a special legislative procedure under the other.[34] This can be relevant when determining the applicability of the bridging clauses for energy and climate measures. It is plain to see that the general bridging clauses of Article 48(7) TEU can be applied to all the policy areas affected. However, Article 192(2)(2) TFEU

30 *European Commission,* COM(2019) 177 final, pp. 3 ff.

31 This competence is intertwined with the policy title on trans-European networks laid down in Articles 170-172 TFEU, where the ordinary legislative procedure applies.

32 See CJEU, case C-380/03, *Germany v. Parliament and Council*, ECLI:EU:C:2006:772, paras 16 ff.; CJEU, case C-490/10, *Parliament v. Council*, ECLI:EU:C:2012:525, paras 44 ff.; see also CJEU, case C-275/92, *Schindler*, ECLI:EU:C:1994:119, para. 22 ; CJEU, case C-36/02, *Omega*, ECLI:EU:C:2004:614, paras 26 f. ; CJEU, case C-452/04, *Fidium Finanz*, ECLI:EU:C:2006:631, paras 34 ff.; CJEU, case C-322/16, *Global Starnet*, ECLI:EU:C:2017:985, paras 29 ff.

33 See CJEU, case 165/87, *Commission v. Council*, ECLI:EU:C:1988:458, para. 11.

34 In this respect see CJEU, case C-300/89, *titanium dioxide*, ECLI:EU:C:1991:244, paras 16 ff.

contains a special bridging clause with a less rigorous procedure for the transition to the ordinary legislative procedure for environmental measures. This includes measures of a primarily fiscal nature in the sense of Article 192(2)(a) TFEU, but not measures of a primarily fiscal nature if the focus of the measure lies within energy policy; then a special legislative procedure applies (Article 194(2) TFEU). Furthermore, measures that significantly affect a Member State's choice between different energy sources and the general structure of its energy supply can be subject to qualified majority voting only if it is an environmental measure; it is excluded from energy policy altogether. Finally, one has to distinguish environmental and energy policy measures of a primarily fiscal nature from matters that fall under the taxation policy if qualified majority voting/the ordinary legislative procedure is prescribed for only one of the areas.

As nuclear energy is an important aspect of the energy mix of the Union's Member States,[35] the Commission's communication addresses also decision-making under the Euratom Treaty.[36] Its main interest lies in the enhancement of democratic accountability through involvement of the European Parliament and the national Parliaments which clearly can be achieved through transition to the ordinary legislative procedure. However, the general *passerelle* clauses of Article 48(7) TEU could not be used. Article 106a(1) of the Euratom Treaty, which provides for the application of certain provisions of the TEU/TFEU, refers only to the ordinary revision procedure of Article 48 TEU, not the simplified procedures under the last two paragraphs of that article. Therefore, the ordinary legislative procedure can be introduced to Euratom only through the ordinary Treaty revision procedure.[37]

IV. Social Policy

The last of the four communications deals with more efficient decision-making in social policy.[38] The social dimension of the EU is enshrined in Article 3(3) TEU as one of the Union's objectives, *i.a.* by aiming at full employment and social progress in a social market economy or by combatting social exclusion and discrimination, and by promoting social justice and protection, equality between women and men and solidarity between generations. These aspects were reiterated by the Member States and the EU institutions in the March 2017 Rome Declaration when they pledged to

35 The Commission states that half of the Member States use nuclear energy, amounting to a total of 27 % of electricity generation in the EU; *European Commission,* COM(2019) 177 final, p. 8.

36 On the constitutional relationship between the Treaties see *Tauschinsky/Böttner*, Europäische Zeitschrift für Wirtschaftsrecht 2018/29, pp. 674–680.

37 With the same result *European Commission,* COM(2019) 177 final, p. 10.

38 See on this also *Aranguiz*, More majority voting on EU social policy? Assessing the Commission proposal, EU Law Analysis of 26/06/2018, available at: https://eulawanalysis.blogspot.com/2019/06/more-majority-voting-on-eu-social.html (01/07/2019).

work towards a "social Europe".[39] It gained even more momentum with the proclamation of the European Pillar of Social Rights in November 2017.[40]

The Union's social policy competences are primarily laid down in Articles 151 ff. TFEU; it is a coordinating competence (Article 5(3) TFEU). According to Article 153(2) TFEU the European Parliament, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States, and may adopt directives laying down minimum requirements for gradual implementation in the fields referred to in paragraph 1 of the Article, having regard to the conditions and technical rules obtaining in each of the Member States. The adoption of directives is excluded for the fields of the combating of social exclusion and the modernisation of social protection systems.

However, a special legislative procedure with the Council acting unanimously after consulting the European Parliament and the advisory committees is prescribed for a number of policy fields. This applies to social security and social protection of workers, the protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, including co-determination (but excluding pay, the right of association, the right to strike or the right to impose lock-outs), and the conditions of employment for third-country nationals legally residing in Union territory.

As in the other policy areas described above, the general *passerelle* clauses of Article 48(7) TEU can be used to render the ordinary legislative procedure applicable for these areas. In addition, Article 153(2) TFEU contains a special bridging clause in its subparagraph 4. According to this provision, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable. However, the special *passerelle* applies only to three of the four areas for which the special legislative procedure is prescribed. It does not apply to social security and social protection of workers which shows that social security is still a sensitive area for the Member States for which they are reluctant to transfer sovereign rights to the European Union.[41] Changing to qualified majority in the Council or to the ordinary legislative procedure requires activating the general bridging clauses of Article 48(7) TEU.[42]

39 Rome Declaration of the Leaders of 27 Member States and of the European Council, the European Parliament and the European Commission, Brussels, 25/03/2017, available at: http://europa.eu/rapid/press-release_STATEMENT-17-767_en.htm (01/07/2019).

40 European Pillar of Social Rights, proclaimed by the European Parliament, the Council and the Commission at the Gothenburg Social Summit for Fair Jobs and Growth, available at: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en (01/07/2019); see on this *Garben*, European Constitutional Law Review 2018/14, pp. 210–230.

41 *Langer*, in: Groeben et al. (eds.), Artikel 153 AEUV, para. 23.

42 *Böttner/Grinc*, p. 38.

Social policy also contains a number of safeguards to protect national sovereignty. First of all, action in the field of social policy shall "take account of the diverse forms of national practices" (Article 151(2) TFEU). Furthermore, the measures taken pursuant to Article 153 TFEU shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof, and shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties (Article 153(4) TFEU).

C. Bridging Clauses: Exploring Their Potential, Boundaries, and Alternatives

The following section will first give a broad overview over the system of treaty revision under the Treaty of Lisbon and the functioning and position of the bridging clauses within that system (section C.I). It is followed by a discussion on the potentials and the limits of these clauses (section C.II). Finally, enhanced cooperation as a means and alternative of flexible integration will be discussed (section C.III).

I. Ordinary and Simplified Treaty Revision

The Treaty of Lisbon introduced an elaborate system and procedures for the amendment of the Treaties. The central provision is Article 48 of the TEU, but provisions on (simplified) treaty revision are scattered throughout primary law. Under the so called "ordinary revision procedure" in Article 48(2) to (5) TEU, Parliament, the Commission, or the Member States can submit a proposal for the amendment of the Treaties. A convention is convened by the European Council. The participants to this convention include not only government representatives, but also representatives of the national parliaments, the European Parliament and the Commission, *i.e.* representatives from the executive and the legislative branch at the national and the European level.[43] This inclusion of other actors enhances transparency and makes Treaty revisions less of a diplomatic negotiation between governments,[44] but rather a supranational procedure.[45] On the basis of the convention's draft, a conference of representatives of the governments of the Member States proposes amendments to the Treaties, which have to be ratified by all Member States before entering into force. Fundamental changes of the Treaties can only be made through this convention method, as it confers a higher degree of democratic legitimacy.[46] Since the entry into

43 *Quesada*, in: Blanke/Mangiameli (eds.), p. 326.
44 *Busia*, in: Bassanini/Tiberi (eds.), p. 405.
45 Cf. *Ohler*, in: Grabitz et al. (eds.), Artikel 48 EUV, para. 29.
46 German Federal Constitutional Court, 2 BvE 2, 5/08 et al., judgment of 30/06/2009, *Treaty of Lisbon*, para. 309 (= BVerfGE 123, 267 (385)); *Terhechte*, EuropaR 2008/48, p. 169; *Granat*, in: Fasone/Lupo (eds.), p. 73.

force of the Lisbon Treaty, two amendments have been made through the ordinary revision procedure.[47]

Apart from the ordinary revision procedure, two "simplified" revision procedures have been implemented. In accordance with Article 48(6) TEU[48] the first of the two simplified revision procedures can be applied for minor amendments to the Treaties. Again, any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising the Treaties. The European Council may then, acting unanimously, adopt an amending decision after consulting the European Parliament and the Commission (as well as the European Central Bank, if necessary); the decision (*i.e.* the proposed amendments) shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. While the content of the decision changes primary law, it is itself an act of secondary law whose legality is reviewable by the Court of Justice.[49]

Amendments under this procedure can only be made to the provisions of Part Three of the TFEU (Articles 26 through 197). Part Three contains nearly half of the TFEU, including important areas such as the internal market, the EMU, justice and home affairs and a whole range of other policy areas.[50] A simplified procedure shall apply as these areas are more likely subject to political changes and thus require a higher degree of flexibility.[51] However, the amendments shall not increase the competences conferred on the Union in the Treaties. As this would imply profound changes in the constitutional setting of the Union, this can only be made using the ordinary revision procedure. The procedure of Article 48(6) TEU has been used in 2013 to amend Article 136 TFEU to provide for a solid constitutional basis for the new European Stability Mechanism.[52]

The second simplified procedure, contained in Article 48(7) TEU, can be used for building the so-called "passerelles", *i.e.* a bridge or passage from unanimity to qualified majority voting or from a special to the ordinary legislative procedure in a given area or case. As such, the bridging clauses serve to bypass the national procedures of approval of treaty amendments.[53] In addition to the general bridging clauses in Arti-

47 Namely, an amendment to the Protocol on transitional provisions and the addition of the Protocol on the concerns of the Irish people.

48 The Treaties contain other provisions which are worded in analogy to Article 48 (6) TEU but which are restricted to a specific area. These include the introduction of a common defence (Article 42 (2) TEU), the extension of the list of Union citizens' rights (Article 25 (2) TFEU), the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 218 (8) (1) second sentence TFEU), the introduction of a uniform electoral procedure for European Parliament elections (Article 223 (1) TFEU), the creation of jurisdiction for European intellectual property rights (Article 262 TFEU) and the determination of the Union's own resources (Article 311 (3) TFEU).

49 See CJEU, case C-370/12, *Pringle*, ECLI:EU:C:2012:756, para. 33; see also *Nettesheim*, EuropaR 2006/41, p. 742.

50 *Peers*, Yearbook of European law 31/2012, pp. 32-33.

51 *Ohler*, at para. 43.

52 *European Council*, Decision 2011/199/EU, OJ L 91/1 of 2011.

53 *Grard*, in : Burgorgue-Larsen et al. (eds.), Article IV-444, at para. 2.

cle 48(7) TEU, the Treaties contain a number of special bridging clauses, some of which cover the areas outlined above.[54]

More specifically, the first subparagraph of Article 48(7) TEU rules that where the TFEU or Title V of the TEU provide for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority (in fact, the default voting procedure, Article 16(3) TEU) in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence. The second subparagraph of Article 48(7) TEU rules that where the TFEU provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure of Articles 289(1), 294 TFEU. The second subparagraph does not apply to the Common Foreign and Security Policy, as the adoption of legislative acts shall be excluded in that area (Articles 24(1), 31(1) TEU). Most special legislative procedures in the TFEU provide that a decision shall be taken by the Council, in most cases by unanimity, after consulting or obtaining the consent of the European Parliament. Making use of this *passerelle* thus means that 1) the European Parliament shall be involved as co-legislator and that 2) the Council shall decide by qualified majority.[55]

II. Power of Passerelle Clauses and Limits to Their Use

The *passerelle* clauses are an innovative instrument and part of a greater toolbox of flexible Treaty amendment.[56] It certainly is a valuable and at the same time ambitious step that the Commission has taken in presenting the four communications. While there is great potential enshrined in these clauses, they are also subject to a number of locks and limits.

The first, obvious advantage of activating the bridging clauses is that qualified majority voting tends to facilitate and accelerate decision-making. Due to the wide scope of application (of the general bridging clauses), existing intergovernmental decision-making procedures can be supranationalised in virtually any policy area,[57] beyond

54 Besides the ones already mentioned, the Treaties contain *passerelle* clauses in Article 81(2) TFEU regarding family law with cross-border implications and in Article 312(2) TFEU concerning the multiannual financial framework. They also include in Article 82(2)(d) and Article 83(1)(3) TFEU so called "semi-passerelle clauses" through which by means of a unanimous Council decision and with the consent of the European Parliament, specific (newly added) aspects or areas of judicial cooperation in criminal matters will be subject to the ordinary legislative procedure (see *Böttner/Grinc*, p. 53).

55 Note that even if the bridging clause is applied and the Council could decide by qualified majority, Article 293 TFEU still applies according to which the Council can amend a Commission proposal only unanimously. On that see *Böttner*, EuropaR 2016/51, p. 113.

56 One can add other forms of Treaty amendment without a full convention, e.g. decisions requiring the approval of the Member States in accordance with their constitutional requirements. See *Böttner/Grinc*, pp. 8 ff. and 12 f. as well as *Peers*.

57 *Böttner/Grinc*, pp. 17 f.

those covered by the Commission's initiatives. In addition, the transition from a special to the ordinary legislative procedure leads to the involvement of the European Parliament, the directly elected EU institution, as a co-legislator, thereby enhancing democratic legitimacy of the legislative acts.

As is often the case in EU policy, unanimity requirements are the result of a political compromise and a concession to Member States that do not (yet) want to give away certain parts of their sovereignty and proceed by qualified majority. This will lead to reluctance on the part of the Member States to activate the bridging clauses, which require unanimity for their adoption. Mitigating the Member States' concerns one needs to take a closer look at the legal effects of the bridging clauses and voting by qualified majority.

First of all, it needs to be pointed out that the general bridging clauses of Article 48(7) TEU serve only as an instrument to change the voting procedures in the Council or the applicable legislative procedure and leave the allocation of competences between the Union and the Member States unaffected. Any other modification to the "the arrangements for exercising the Union's competences" (Article 2(6) TFEU) can only be made through the other revision procedures.[58] Fundamental changes to the Treaties are reserved to the Convention method and the ordinary revision procedure (Article 48(2) to (5) TEU) or, as the case may be, to the simplified procedure of Article 48(6) TEU, as only these procedures can confer the necessary level of democratic legitimation.[59]

Secondly, the wording of the bridging clauses ("in a given area or case", "legislative acts […] adopted […] in accordance with a special legislative procedure") insinuates that bridging clauses would change an entire legal basis to supranational voting methods with the effect that *all* future legal acts under that specific legal basis shall be adopted by qualified majority in the Council or the ordinary legislative procedure.[60] However, this is not necessarily the case. Instead, the decision activating a bridging clause can specify a very narrow area of competence. Even further, the bridging clauses could be used for the adoption of a single legal/legislative act. While at a first glance this may seem illogical (as obviously unanimity in the Council is reached), it grants the Council the possibility to make future *amendments* to a legal act with qualified majority. In addition, there can be an interest to give co-decision rights to the European Parliament for a single legislative project without having a general shift to the ordinary legislative procedure under a certain legal basis. This possibility for gradual transition to qualified majority and the ordinary legislative procedure in one and the same policy area may make it less unattractive for Member States to begin making use of the bridging clauses.

Furthermore, qualified majority voting is accompanied by the "threat" of being outvoted. It entails for the individual Member State (via its Council representative)

58 See *Peers*, at pp. 41-42; *Böttner*, European Const. Law Review 2016/12, p. 503.

59 Cf. German Federal Constitutional Court, 2 BvR 2728/13 et al., *Treaty of Lisbon*, judgment of 30/06/2009, ECLI:DE:BVerfG:2009:es20090630.2bve000208, para. 309; cf. also *Granat*, p. 73; *Böttner*, European Const. Law Review 2016/12, p. 501.

60 *Böttner/Grinc*, pp. 28 f.; agreed to by *Luts*, p. 32.

the loss of the unconditional veto position. Vetoes are henceforth only possible if several members oppose a decision (blocking minority, Article 16(4)(2) of the TEU) so as to prevent the 65% members or the 55% population requirement.[61] In the words of the German Federal Constitutional Court, majority decisions in the Council that are not agreed upon by a formal revision of the Treaties constitute "drops in influence" (*Einflussknicke*).[62] However, qualified majority voting has rarely been employed to outvote Member States. Instead, it is asserted that around 80 percent of decisions are ultimately taken in consensus even in cases where a qualified majority in the Council would suffice and that there have been only a handful of occurrences where three or more Member States have been forced to accept a majority vote.[63] Furthermore, qualified majority voting tends to allow for more space for discussion and common solutions that reflect the interests of all.[64] As the Commission asserts, Member States "often hold back from seriously negotiating solutions in the Council, as they know that they can simply veto any result that they do not like. This 'unanimity culture' sometimes encourages Member States […] to focus on the preservation of their national systems, instead of seeking to reach a necessary compromise to safeguard the EU's general interests."[65]

In this context, one should recall the so called Ioannina compromise.[66] This dates back to an informal meeting of EU foreign ministers in the Greek city of Ioannina in 1994 and is intended to protect minorities that oppose the adoption of an act by qualified majority. Based on Declaration No. 7 annexed to the Lisbon Treaty, the compromise is now enshrined in a Council Decision.[67] According to that decision, if members of the Council, representing at least 55 % of the population or at least 55 % of the number of Member States necessary to constitute a blocking minority, a vote shall not be taken and the Council shall discuss the issue (Article 4). The Council shall do all in its power to reach, within a reasonable time, a satisfactory solution to address concerns raised by the members of the Council (Article 5) and the Council Presidency shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council (Article 6). While clearly this is no tool to prevent unwanted decisions by qualified majority, it gives the Member States at least a political instrument for further negotiations on disputed issues. This decreases reluctance to proceed with a vote (which would result in a Member State's being outvoted into an undesired legal act) and can increase the search for consensus.

61 *Böttner/Grinc*, pp. 31 f.
62 German Federal Constitutional Court, 2 BvR 2728/13 et al., *OMT*, judgment of 21/06/2016, ECLI:DE:BVerfG:2016:rs20160621.2bvr272813, para. 131.
63 *Bendiek et al*., p. 2; see also *European Commission,* COM(2018) 647 final, p. 3.
64 *European Commission,* COM(2018) 647 final, pp. 2 f.
65 *European Commission,* COM(2019) 8 final, p. 8.
66 See on this *Poensgen*, in: Due et al. (eds.), pp. 113-1140; *Everling*, in: Gaitanides et al. (eds.), pp. 158–175.
67 Council Decision 2009/857/EC of 13 December 2007 relating to the implementation of Article 9C(4) of the Treaty on European Union and Article 205(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other, OJ L 314 of 01/12/2009, p. 73.

Therefore, the activation of the bridging clauses generally seems promising and beneficial to EU policy-making. Nevertheless, the use of the clauses is preceded by an intense procedure. As one step of the procedure, all *passerelle* clauses require unanimity in the European Council or the Council, which may be hard to achieve. In addition to this EU law requirement, a number of Member States have adopted domestic rules that make the (European) Council representative's vote dependant on a national parliamentary authorisation.[68] In Germany, for example, according to Section 4(1) of the Responsibility for Integration Act,[69] the German representative in the European Council may approve a proposal for a decision within the meaning of Article 48(7) of the TEU or abstain from voting (as abstention does not prevent unanimity) on such a proposal only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. The law under Article 23(1) requires a majority of two thirds of the Members of the Bundestag and two thirds of the votes of the Bundesrat (Article 79(2) of the Basic Law). If any such law leads to amendments to the Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20, it shall be inadmissible (Article 79(3) of the Basic Law).

Under the general bridging clauses, the European Council can proceed only if within a six-month period no national Parliament makes known its opposition to the initiative (*nihil obstat*); in that case, the European Council is deemed authorized to proceed with the initiative (fiction of consent of the national Parliaments – *Genehmigungsfiktion*). This means that each national Parliament can exert a veto on the initiative to use a *passerelle* clause. There is no substantial requirement to the veto – unlike the requirement to give reasons for an opinion under the subsidiarity review; a simple "no" suffices. A condition, however, exists for bicameral parliaments (thirteen out of the 28 national Parliaments): while under the subsidiarity review each national chamber can send a reasoned opinion, the veto under Article 48(7) TEU can be exercised only by the national Parliament as a whole. Domestic law must provide coordinating rules to that effect.[70]

Reassurance for the Member States could result from the fact that the activation of the bridging clause, which legally is a (European) Council decision, is revocable and not necessarily set in stone. The decision activating the bridging clause can be repealed by another (European) Council decision. However, as a matter of principle, the revocation of a legal act requires an act of the same nature. This means that *passerelle* clauses can be deactivated only by a new, unanimous (European) Council decision and, as the case may be, by consent of the European Parliament.[71] As a result, the

68 *Böttner/Grinc*, pp. 77 ff.

69 Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union (Responsibility for Integration Act) of 22 September 2009, as amended by Article 1 of the Act of 1 December 2009. English version available at: http://www.gesetze-im-internet.de/englisch_intvg/index.html (01/07/2019).

70 *Böttner/Grinc*, pp. 66 ff.; affirmed by *Luts*, pp. 43 f., with regard to Belgium.

71 *Böttner/Grinc*, pp. 34 f.

passerelle clauses are *de facto* a one-way street. A Member State may therefore be less likely to consider a proposal on the use of the bridging clauses, knowing that the loss of its veto position (under unanimity) is permanent. As shown, however, there are enough safeguards for Member State action.

III. Enhanced Cooperation as an Alternative?

The procedural requirements imposed on the activation of the bridging clauses make their use improbable, at least in the current state of disagreement among the EU Member States. If anything, Member States may decide to shift to qualified majority voting or the ordinary legislative procedure in very narrow areas, maybe even for single dossiers only. However, while technically possible to be applied to individual legislative initiatives, bridging clauses are not designed to overcome individual blocking positions for a certain dossier. For these instances, the instrument of enhanced cooperation is the practical way to go.[72]

Enhanced cooperation under Article 20 TEU allows a group of at least nine Member States to make us of the Union's institutions and competences in order to pursue a project as a pioneer group. The legal acts adopted within enhanced cooperation do not bind the non-participating Member States, but participation in enhanced cooperation must be open to any Union member which is not yet taking part. Since the entry into force of the Treaty of Lisbon, the instrument of enhanced cooperation has been used in at least four cases:[73] for the regulation on the law applicable to divorce and legal separation (Rome III),[74] to regulate unitary patent protection,[75] for a cooperation to establish a European financial transaction tax,[76] and on the "twin regulations" for the property regimes of international couples.[77] The European Public Prosecutor's Office has also been established by means of enhanced cooperation, but with an expedited procedure.[78]

It appears that Member State have become less hesitant to resort to enhanced cooperation in cases where agreement could not be reached within the Union at large. At the same time, however, one can find that the Member States are cautious to es-

72 Ibid., p. 93; see in detail *Böttner*, ZEuS 2016/19, pp. 501-549 and *Böttner*.
73 *Böttner*, IEL Working Papers 2/2018, pp. 8 ff.
74 Council Decision 2010/405/EU of 12/06/2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 189 of 22/07/2010, p. 12.
75 Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection, OJ L 76 of 22/03/2011, p. 53.
76 Council Decision 2013/52/EU of 22/01/2013 authorising enhanced cooperation in the area of financial transaction tax, OJ L 22 of 25/01/2013, p. 11.
77 Council Decision (EU) 2016/954 of 09/06/2016 authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships, OJ L 159 of 16/06/2016, p. 16.
78 Council Regulation (EU) 2017/1939 of 12/10/2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283 of 31/10/2017, p. 1.

tablish enhanced cooperation and pay close attention to the requirement that such cooperation may only be initiated as a last resort. Most projects were deliberated among all Member States for a considerable length before they were found to be in a deadlock.

In fact, enhanced cooperation has been endorsed by the Union institutions as a means to further the integration process. In the Commission's White Paper on the future of Europe,[79] one of the scenarios is entitled "those who want more, do more" (scenario 3). In this scenario, groups of Member States as "coalitions of the willing" agree on specific arrangements to deepen their cooperation in chosen domains.[80] While not explicitly mentioned, this may comprise also the instrument of enhanced cooperation. Only a few weeks later, the European Parliament adopted a resolution in which it stressed "the importance of taking full advantage of the enhanced cooperation procedure" in order to "promote the attainment of the objectives of the Union and strengthen their integration process".[81] At the same time, it announced that it will not give its consent to any new proposal for enhanced cooperation "unless the participating Member States commit to activate the special 'passerelle clause' enshrined in Article 333 TFEU".[82] This is a bridging clause which mirrors the general bridging clause but which is specifically designed for the use of the group of Member States participating in enhanced cooperation. It requires a unanimous Council decision by the participating Member States and enables transition to qualified majority voting or the ordinary legislative procedure for activities of that group. It does not affect decision-making by the Union at large under the same legal basis. However, this intertwining of enhanced cooperation and the special *passerelle* clause is not free from difficulties: It is not spelled out what happens to an activated *passerelle* once all Member States participate in a specific cooperation whose legal acts are then transformed into Union acquis.[83]

The instrument of enhanced cooperation has proven to be an effective means to overcome deadlocks for single legislative files.[84] Nevertheless, it should be used with caution as there is the risk that an overly use creates a legally complex and maybe even confusing situation, for example when different cases of enhanced cooperation are closely related or overlap, while the groups of participating Member States vary. Some even painted the picture of a core Europe with fuzzy edges due to the intensification of legal differentiation.[85] To prevent this, Member States and the EU institutions need to make sure that enhanced cooperation does not undermine the internal market or economic, social and territorial cohesion and that it does not constitute a barrier to or

79 *European Commission,* COM(2017)2025, Brussels, 01/03/2017.
80 *European Commission,* COM(2017)2025, p. 20.
81 *European Parliament*, resolution of 16/02/2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), P8_TA(2017)0049, point 35.
82 P8_TA(2017)0049, point 34.
83 See on this point in detail: *Böttner/Grinc*,pp. 42 ff.
84 *Böttner*, p. 538.
85 See inter alia *Ondarza*, SWP-Studie S 20/2012.

discrimination in trade between Member States, or distort competition between them (cf. Article 326 TFEU).

D. Conclusions and Outlook

The Commission's efforts are clearly directed towards furthering the integration process. Its recent proposals and initiatives aim towards overcoming deadlocks and towards advancing decision-making in specific areas. In this context, one should welcome the ambitious set of communications dealing with the use of the bridging clauses for the transition to more qualified majority voting and legislation under the ordinary legislative procedure.

Ambitious though it may be, the bridging clauses are sleeping beauties that can be awakened only by a prince's kiss in the form of united, integrationist Member States. First reactions are mixed: Some Member States have already announced their support for using the *passerelle* clauses, but all in all they are not overly enthusiastic.[86] Member States could thus use their veto position for political bargaining, whereby their consent to a *passerelle* clause in a specific area would require political (and/or legal) concessions in another area. Member States and the Commission need to be careful that the benefits of those compromises are not outweighed by the costs of political trade-ins. The decreasing reluctance to resort to forms of differentiated integration, notably enhanced cooperation under Article 20 TEU, offers an alternative route for willing Member States, but at the cost of legal unity and the long-term risk of concentric circles of different levels of integration.

The new Commission is therefore well advised to seize the moment and push forward its proposals. The United Kingdom's leaving the European Union provides for a window of opportunity to put the Union on a more solid legal basis with effective decision-making procedures. At the same time, the Union is likely to grow in the years to come, thus further increasing the number of voices and decision-makers. The Commission, but also the Member States, should be brave enough to transfer areas that are still characterised by intergovernmental voting (*i.e.*, unanimity among the Member States) to the supranational voting modalities. However, this requires a clear commitment from the governments of the Member States to European cooperation, to sincere cooperation as contained in Article 4(3) TEU.

BIBLIOGRAPHY

ARANGUIZ, ANE, *More majority voting on EU social policy? Assessing the Commission proposal (EU Law Analysis)*, 2018 available at: https://eulawanalysis.blogspot.com/2019/06/more-majority-voting-on-eu-social.html, zuletzt aktualisiert am 26.06.2018 (16/09/2020)

86 See *Luts*, pp. 35 f with further reference; (fn. 17), p. 1 with reference to the June 2018 Meseberg declaration.

ARNAULD, ANDREAS VON; HUFELD, ULRICH (eds.), *Systematischer Kommentar zu den Lissabon-Begleitgesetzen. IntVG, EUZBBG, EUZBLG; Handkommentar*, 2. Auflage, 2018, Baden-Baden

BENDIEK, ANNEGRET; KEMPIN, RONJA; ONDARZA, NICOLAI VON, *Qualified Majority Voting and Flexible Integration for a More Effective CFSP? A Critical Examination of the EU's Options*, SWP Comment, Hg. v. Stiftung Wissenschaft und Politik (25), 2018, available at: https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C25_bdk_kmp_orz.pdf (16/09/2020)

BLANKE, HERMANN-JOSEF; MANGIAMELI, STELIO (eds.), *The Treaty on European Union – A Commentary*, Heidelberg, 2013

BÖTTNER, ROBERT (i.E.), *The Constutitonal Framework for Enhanced Cooperation*, Leiden

BÖTTNER, ROBERT, *Ein scharfes Schwert der Kommission? : Überlegungen zu Artikel 293 AEUV*, in: Europarecht, 2016, Volume 51, Issue 1, pp. 105–122

BÖTTNER, ROBERT, *Eine Idee lernt laufen – zur Praxis der verstärkten Zusammenarbeit nach Lissabon*, in: Zeitschrift für europarechtliche Studien, 2016,Volume 19, Issue 4, pp. 501–549

BÖTTNER, ROBERT, *The Treaty amendment procedures and the relationship between Article 31(3) TEU and the general bridging clause of Article 48(7) TEU*, in: European Constitutional Law Review, 2016, Volume 12, Issue 3, pp. 499–519

BÖTTNER, ROBERT, *Enhanced cooperation – a suitable means to further integration?*, Birmingham Law School, Institute of European Law, IEL Working Papers, 2/2018

BÖTTNER, ROBERT; GRINC, JAN, *Bridging Clauses in European Constitutional Law. Legal Framework and Parliamentary Participation*, Heidelberg, 2018

BURGORGUE-LARSEN, LAURENCE; LEVADE, ANNE; PICOD, FABRICE (eds.), *Traité établissant une constitution pour l'Europe. Commentaire article par article*, Bruxelles, 2007

BUSIA, GIUSEPPE, *Revisione del Trattato, ammissione di nuovi Stati e recesso dall'Unione*, in: Bassanini, Franco ; Tiberi, Giulia (eds.), Le nuove istituzioni europee, Commento al Trattato di Lisbona, Nuova ed. riv. e aggiornata (Quaderni di ASTRID), 2010, pp. 401–414

EVERLING, ULRICH, *Mehrheitsabstimmung im Rat der EU nach dem Verfassungsvertrage: Rückkehr zu Luxemburg und Ioannina?*, in: Gaitanides, Charlotte; Kadelbach, Stefan; Rodríguez Iglesias, Gil Carlos (eds.), Europa und seine Verfassung, Festschrift für Manfred Zuleeg zum siebzigsten Geburtstag, Unter Mitarbeit von Manfred Zuleeg, Baden-Baden, 2005, pp. 158–175

GARBEN, SACHA, *The European pillar of social rights : effectively addressing displacement?*, in: European Constitutional Law Review, 2018, Volume 14, Issue 1, pp. 210–230

GRABITZ, EBERHARD; HILF, MEINHARD; NETTESHEIM, MARTIN (eds.), *Das Recht der Europäischen Union*, Munich

GRANAT, KATARZYNA, *Interparliamentary cooperation and the simplified revision procedures*, in: Fasone, Cristina; Lupo, Nicola (eds.), Interparliamentary cooperation in the composite European constitution, Oxford, Portland, Oregon, 2016 pp. 73–90

GROEBEN, HANS VON DER; SCHWARZE, JÜRGEN; HATJE, ARMIN (eds.), *Europäisches Unionsrecht. Vertrag über die Europäische Union, Vertrag über die Arbeitsweise der Europäischen Union, Charta der Grundrechte der Europäischen Union*, 7. Aufl., Baden-Baden, 2015

JIMENA QUESADA, LUIS, *The Revision Procedures of the Treaty*, in: Blanke, Hermann-Josef; Mangiameli, Stelio (eds.), The European Union after Lisbon, Constitutional Basis, Economic Order and External Action, Heidelberg: Springer, 2012, pp. 323–341

LUTS, JORIS, *Overbruggingclausules en wijziging van de fiscale besluitvormingsprocedure in de EU*, in: Algemeen Fiscaal Tijdschrift (3), 2019, pp. 30–47

NETTESHEIM, MARTIN, *Normenhierarchie im EU-Recht*, in: *Europarecht*, 2006, Volume 41, Issue 6, pp. 737–772

ONDARZA, NICOLAI VON, *Zwischen Integrationskern und Zerfaserung – Folgen und Chancen einer Strategie differenzierter Integration*, Hg. v. Stiftung Wissenschaft und Politik , 2012, SWP-Studie, pp. 20

PEERS, STEVE, *The future of EU treaty amendments*, in: *Yearbook of European law*. 2012, Volume 31, pp. 17–111

POENSGEN, GISBERT, *Das Paradox von Ioannina: Betrachtungen zu einem Ratsbeschluss* in: Due, Ole; Lutter, MarcusSchwarze, Jürgen (eds.), Festschrift für Ulrich Everling. Baden-Baden,1995, pp. 1133–1140

TAUSCHINSKY, ELJALILL; BÖTTNER, ROBERT, "*It's complicated*" *– der unklare Beziehungsstatus zwischen der EU und Euratom*. In: Europäische Zeitschrift für Wirtschaftsrecht, 2018, Volume 29, Issue 16, pp. 674–680.

TERHECHTE, JÖRG PHILIPP, *Der Vertrag von Lissabon: grundlegende Verfassungsurkunde der europäischen Rechtsgemeinschaft oder technischer Änderungsvertrag?,* in: Europarecht, 2008, Volume 48, Issue 2, pp. 143–189

VEDDER, CHRISTOPH; HEINTSCHEL VON HEINEGG, WOLFF (eds.), *Europäisches Unionsrecht. EUV – AEUV – Grundrechte-Charta*, 2. Auflage, Baden-Baden, 2018