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**REPORT FROM THE COMMISSION**

**ANNUAL REPORT 2021**

**ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND  
PROPORTIONALITY AND ON RELATIONS WITH NATIONAL PARLIAMENTS**

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## ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY AND ON RELATIONS WITH NATIONAL PARLIAMENTS

### 1. INTRODUCTION

This is the 29<sup>th</sup> report on the application of the principles of subsidiarity and proportionality, submitted under Article 9 of Protocol No 2 on the application of the principles of subsidiarity and proportionality ('Protocol No 2') to the Treaty on European Union and to the Treaty on the Functioning of the European Union. It covers, like the previous three reports, the Commission's relations with national Parliaments, which play a major role in applying these principles.

In 2021, the European Parliament, the Council, the Commission, and the Committee of the Regions continued to apply and further develop their tested tools and procedures to ensure the subsidiarity and proportionality principles were respected in their work to prepare EU legislation. The Commission, consolidating its better regulation policy, adopted new guidelines and a toolbox, fully implementing its commitment to produce the subsidiarity assessment grid proposed by the Task Force on Subsidiarity, Proportionality and 'Doing Less, More Efficiently'<sup>1</sup> for all politically sensitive and important legislative proposals accompanied by an impact assessment. This gave further emphasis to a powerful tool that, if used by all actors involved, can significantly facilitate the objective assessment of how the subsidiarity and proportionality principles are being respected in EU legislation. The Committee of the Regions also further developed its contribution to the better law-making agenda, in particular through its network of regional hubs, and promoted the concept of 'active subsidiarity'<sup>2</sup>.

The institutions had fully adapted their working methods to accommodate the conditions imposed by the COVID-19 pandemic and its developments. In this second year of restrictions, collaboration with national Parliaments intensified. National Parliaments submitted 360 opinions, which is considerably more than in the 2 previous years (225 in 2020 and 159 in 2019)<sup>3</sup>, partly reflecting the increased number of proposals that the Commission has presented. Of these, there were a total of 16 reasoned opinions, expressing concerns that the subsidiarity principle had been breached. The majority of these focused on the legislative proposals in the 'Fit for 55' package. No individual proposal triggered more than three reasoned opinions. The package that received the highest degree of attention was 'Fit for 55', and the individual proposals which received the most comments were the Digital Services Act (10 opinions), the Directive on adequate minimum wages (9 opinions) and the two proposals on the EU Digital Covid Certificate (8 opinions each).

The written exchange with national Parliaments continued to intensify in 2021, as did the oral political dialogue in its multiple forms. Meetings took place in physical, virtual or hybrid format, and the number of these and the Commission's participation in interparliamentary events further increased, partly thanks to the possibilities offered by videoconferencing.

Additional noteworthy elements in national Parliaments' relations with the EU institutions in 2021 were: (i) the key role that most national Parliaments played, according to their national constitutional rules, in approving the 2020 Council Decision on own resources; and (ii) their high levels of engagement in preparing and implementing the Conference on the Future of Europe.

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<sup>1</sup> [https://ec.europa.eu/info/sites/default/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently\\_en.pdf](https://ec.europa.eu/info/sites/default/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.pdf)

<sup>2</sup> See Section 2.4.

<sup>3</sup> All opinions and Commission replies are available on [https://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/npa/index\\_en.htm](https://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npa/index_en.htm).

## 2. APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY BY THE INSTITUTIONS

### 2.1. THE COMMISSION

In 2021, the Commission continued to apply its ‘better regulation’ agenda, which ensures evidence-based and transparent EU law-making, and to integrate the principles of subsidiarity and proportionality at all stages of its policymaking. It supported those initiatives likely to have significant impacts with comprehensive impact assessments. It also followed its commitment to evaluate existing policies before presenting proposals to revise them. These impact assessments and evaluations include analysing the extent to which the initiatives comply with the principles of subsidiarity and proportionality.

#### **Better regulation: new communication, guidelines and toolbox**

In November 2021, the Commission adopted new better regulation guidelines<sup>4</sup> and a new better regulation toolbox<sup>5</sup>. The guidelines built on the key aspects outlined in its Communication on better regulation<sup>6</sup> of 29 April 2021 that announced a new generation of better regulation.

The Communication proposed several improvements to the EU law-making process, in line with the ambitious goals of the von der Leyen Commission, and built on the 2019 better regulation stocktaking exercise<sup>7</sup>, which had identified several areas for improvement in the better regulation agenda. The Communication reiterated that better regulation is a joint endeavour for all stakeholders, to ensure that legislation is of the highest quality and that the EU should act only when necessary (subsidiarity) and to the extent necessary (proportionality). It also announced the publication of a subsidiarity assessment grid with every politically sensitive or important legislative proposal that is accompanied by an impact assessment, which helps to put these principles in practice. This follows up on the recommendations by the Task Force on Subsidiarity, Proportionality and ‘Doing Less More Efficiently’<sup>8</sup>.

The new elements introduced include taking a ‘one in, one out’ approach to minimise the burden of new EU legislation for individuals and businesses and improving the way in which better regulation addresses and supports sustainability and the digital transformation. Of direct relevance for national Parliaments is the simplification of public consultations by introducing a single ‘call for evidence’, which replaces several previous consultations at different stages of policy preparation, on the improved ‘Have Your Say’ portal<sup>9</sup>. The input that national and regional Parliaments or national, regional and local authorities may decide to give is clearly identified and distinguished from input from other stakeholders. However, only a small number of national Parliaments used this portal in 2021.

#### **‘Fit for Future’ platform**

Set up in May 2020 to succeed the REFIT platform, the ‘Fit for Future’ platform (‘the platform’) is a high-level expert group that helps the Commission to simplify laws, reduce related unnecessary regulatory burdens, and to tap into the expertise and experience in lower levels of governance and of stakeholders to ensure that legislation achieves its objectives in the most efficient way, taking into account experience from national, local and regional authorities.

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<sup>4</sup> SWD(2021) 305 final, replacing SWD(2017) 350.

<sup>5</sup> [https://ec.europa.eu/info/sites/default/files/br\\_toolbox-nov\\_2021\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf)

<sup>6</sup> COM(2021) 219 final.

<sup>7</sup> COM(2019) 178 final.

<sup>8</sup> See footnote 1.

<sup>9</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say_en)

It brings together representatives from Member States' national, regional, and local authorities, the Committee of the Regions – supported by its RegHub<sup>10</sup> network –, the European Economic and Social Committee and stakeholders representing business and non-governmental organisations. The platform plays an important role in providing information on how laws are being implemented. In 2021, it presented an ambitious first annual work programme<sup>11</sup>, covering 15 different topics in a broad range of sectors, with priorities placed on digitalisation, efficient labelling, authorisation and reporting obligations, and simplification of EU legislation.

### **Impact assessments**

The Commission analyses the principles of subsidiarity and proportionality in all impact assessments prepared for policy proposals. These assessments are subject to independent quality control by the Regulatory Scrutiny Board<sup>12</sup>. In 2021, the Regulatory Scrutiny Board scrutinised 83 impact assessments, a considerable increase compared to the previous year (41).

### **Evaluations and fitness checks**

Subsidiarity and proportionality are also essential aspects of evaluations and fitness checks, which assess whether action at EU level has delivered the expected results in terms of efficiency, effectiveness, coherence, relevance and EU added value.

In 2021, the Regulatory Scrutiny Board scrutinised 15 major evaluations, including 2 fitness checks, compared to 13 in 2020. Some of the aspects that evaluations cover are particularly relevant in terms of subsidiarity and proportionality. For instance, the evaluation of the Regulation (EU) No 1315/2013 on Union Guidelines for the development of a trans-European transport network<sup>13</sup> (TEN-T) looked *inter alia* at the changes that can reasonably be argued are due to the EU intervention, and which exceed what could have been expected from national actions by the Member States. The evaluation concluded that the effective alignment and implementation of actions at national, regional and local level was due to a single and strong European policy. It also noted that significant added value generated through TEN-T cooperation with third countries would not have been achievable if Member States had acted individually.

## **2.2. THE EUROPEAN PARLIAMENT<sup>14</sup>**

In 2021, the European Parliament formally received 227 submissions from national Parliaments under Protocol No 2, of which 24 were reasoned opinions<sup>15</sup> and 203 were contributions (submissions not raising concerns about subsidiarity). By comparison, in 2020, the European Parliament received 134 submissions, 13 of which were reasoned opinions<sup>16</sup>.

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<sup>10</sup> RegHub is a network of local and regional authorities which aims to collect experiences on EU policy implementation through consultations of actors at local level. For more information, see: <https://portal.cor.europa.eu/reghub/Pages/default.aspx>.

<sup>11</sup> [https://ec.europa.eu/info/sites/default/files/2021\\_annual\\_work\\_programme\\_fit\\_for\\_future\\_platform\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_annual_work_programme_fit_for_future_platform_en.pdf)

<sup>12</sup> [https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board\\_en](https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en)

<sup>13</sup> SWD(2021) 117 final.

<sup>14</sup> Sections 2.2. to 2.4. of this report are based on contributions from the respective EU institutions and bodies.

<sup>15</sup> The European Parliament and the Commission (who registered 16 reasoned opinions during the same period) interpret the number of reasoned opinions differently. A reasoned opinion relating to more than one Commission proposal is counted by the Commission as only one reasoned opinion for statistical purposes, while for determining whether the threshold for a yellow/orange card has been reached for a Commission proposal, this reasoned opinion counts as one reasoned opinion for each of the proposals covered. By contrast, the European Parliament counts as many reasoned opinions as proposals involved.

<sup>16</sup> All submissions from national Parliaments to the European Parliament are also available on Connect, the European Parliament's database of national parliamentary documents:

Mr Nacho Sánchez Amor (S&D/ES) and Mr Gilles Lebreton (ID/FR) were the standing rapporteurs for subsidiarity of the Committee on Legal Affairs (JURI) in 2021, in the first and second half of the year respectively. During their mandate, the Committee – which under Annex VI to the Rules of Procedure of the European Parliament has full responsibility for ensuring compliance of EU legislation with the principle of subsidiarity – issued a report on the Commission’s annual reports on subsidiarity and proportionality covering the years 2017-2019<sup>17</sup>. Its rapporteur was Mr Mislav Kolakušić (NI/HR). The committee also contributed to the 35th<sup>18</sup> and 36th<sup>19</sup> biannual reports prepared by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) on parliamentary practices.

The European Parliamentary Research Service (EPRS) continued to assist the European Parliament in incorporating subsidiarity and proportionality considerations into its work by:

- systematically scrutinising the subsidiarity and proportionality aspects of Commission impact assessments and drawing attention to any concerns expressed, notably by national Parliaments and the Committee of the Regions;
- ensuring that the European Parliament’s own work fully adheres to these principles, for example by carrying out impact assessments of its own substantial amendments or by analysing the added value of the European Parliament’s proposals for new legislation, based on Article 225 of the Treaty on the Functioning of the European Union, and the cost of no EU action;
- scrutinising subsidiarity and proportionality aspects when drafting impact assessments, focusing on EU added value.

In 2021, the EPRS produced 33 initial appraisals of Commission impact assessments and 2 substitute impact assessments<sup>20</sup>, 7 *ex post* European implementation assessments, 27 implementation appraisals, 3 ‘implementation in action’ papers, 2 other *ex post* evaluations (including a publication on the new better regulation guidelines) and 1 publication on ‘better law-making in action’, which scrutinises the Commission’s annual work programme. On the EU added value side, 2 reports on the cost of non-Europe, 12 EU added value assessments and 1 paper on the added value of existing EU policies were completed.

### 2.3. THE COUNCIL

In 2021, the Council of the European Union (‘the Council’) – including its relevant Working Parties – continued to monitor the effective implementation of conclusions that the Council and

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<sup>17</sup> <http://www.europarl.europa.eu/relnatparl/en/connect/welcome.html>.  
Report on European Union regulatory fitness and subsidiarity and proportionality – report on better law making covering the years 2017, 2018 and 2019 (2020/2262(INI)),

<sup>18</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2021-0191\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2021-0191_EN.html).

<sup>19</sup> <https://parleu2021.parlamento.pt/ficheiros/12/35th%20Bi-annual%20Report%20of%20COSAC%20EN.pdf>

<sup>20</sup> <https://secure.ipex.eu/IPEXL-WEB/download/file/082d29087d34505f017d5731c86503b7>

The definitions of the terms included in this paragraph can be found in IATE, the EU’s terminology database: <https://iate.europa.eu/home>. A substitute impact assessment is a European Parliament’s own impact assessment of the aspects not dealt with at all in the Commission’s original impact assessment, prepared or commissioned by the Ex-Ante Impact Assessment Unit of the European Parliamentary Research Service at the request of the committee(s) responsible. In 2021, it produced a substitute impact assessment on the proposal on the temporary derogation from the e-Privacy Directive for the purpose of fighting online child sexual abuse ([https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662598/EPRS\\_STU\(2021\)662598\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662598/EPRS_STU(2021)662598_EN.pdf)) and on the New Pact on Migration and Asylum ([https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS\\_STU\(2021\)694210\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU(2021)694210_EN.pdf)).

the European Council had adopted in previous years covering the principles of subsidiarity and proportionality. These were the European Council conclusions on ‘Further completing the Single Market agenda’<sup>21</sup>, the Council conclusions in relation to ‘Better regulation – ensuring competitiveness and sustainability, inclusive growth’<sup>22</sup> and the Council conclusions on ‘Regulatory sandboxes and experimentation clauses as tools for an innovation-friendly, future proof and resilient regulatory framework that masters disruptive challenges in the digital age’<sup>23</sup>.

In addition to its Treaty obligations, the Council keeps Member States informed of national Parliaments’ opinions on Commission legislative proposals. In 2021, the General Secretariat of the Council distributed 16 reasoned opinions received within the framework of Protocol No 2 and 165 opinions issued within the framework of the political dialogue<sup>24</sup>.

## 2.4. THE COMMITTEE OF THE REGIONS

The Committee of the Regions’ subsidiarity-relevant activities in 2021 were guided by the priorities for the 2020-2025 mandate period that it had set in the previous year<sup>25</sup>. These reiterated the Committee of the Regions’ determination to continue to improve the quality of EU legislation and to better anticipate its territorial impact and promote the principle of active subsidiarity<sup>26</sup>. This determination was backed up by the findings of the Committee of the Regions’ 2021 EU Regional and Local Barometer<sup>27</sup>, which emphasised that almost two thirds of local politicians feel that regions, cities and villages do not have enough influence on EU policymaking. In this respect, the Committee of the Regions concluded<sup>28</sup> that ‘Europe can emerge more democratically, and also more environmentally, resilient from the COVID-19 crisis with a formal recognition and application of active subsidiarity to ensure that actions are taken at the level whose action will produce maximised added value for the public, and that coordinated and effective decision-making processes are in place’.

In 2021, the Committee of the Regions issued 59 opinions and 9 resolutions. Of these, 10 legislative opinions, 17 non-legislative opinions and 5 resolutions included specific references to compliance with the principles of subsidiarity and proportionality or concrete recommendations to improve that compliance. Many of these were based on the 30 contributions on subsidiarity and proportionality submitted in 2021 via REGPEX, the sub-network of the Subsidiarity Monitoring Network<sup>29</sup>, open to regional Parliaments and governments with legislative powers to

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<sup>21</sup> EUCO doc 17/18, point II/2 and IV/15 and EUCO doc 13/20, point II/4 as well as in terms of implementation Council doc ST 11654/21.

<sup>22</sup> Council doc ST 6232/20, points 2 and 12.

<sup>23</sup> Council doc ST 13026/1/20 REV 1, points 3 and 12.

<sup>24</sup> The General Secretariat of the Council does not systematically receive all opinions from the national Parliaments, so the number of opinions received may differ between the institutions; see also footnote 15.

<sup>25</sup> Resolution of the European Committee of the Regions – The European Committee of the Regions’ priorities for 2020-2025 – Europe closer to the people through its villages, cities and regions, OJ C 324, 1.10.2020, p. 8-15, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XR1392>.

<sup>26</sup> The Commission believes that ‘active subsidiarity’, with national Parliaments and local and regional authorities providing contributions in the pre-legislative phase, would help the Commission to calibrate its proposals in the specific multi-level governance context. For more on this way of working, see the report on ‘active subsidiarity’ by the Task Force on Subsidiarity, Proportionality and ‘Doing less more efficiently’ at [https://ec.europa.eu/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently\\_en](https://ec.europa.eu/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en).

<sup>27</sup> <https://cor.europa.eu/en/our-work/Documents/barometer-fullreport%20web.pdf>

<sup>28</sup> Resolution on the 2021 EU Annual Regional and Local Barometer, <https://webapi2016.cor.europa.eu/v1/documents/COR-2021-03857-00-00-RES-TRA-EN.docx/content>.

<sup>29</sup> Launched in April 2007, the Subsidiarity Monitoring Network was set up to facilitate the exchange of information between local and regional authorities and the EU level regarding various documents and legislative and political proposals from the Commission. At the end of 2021, it had 150 members, while

support their participation in the early phase of the legislative process (subsidiarity check).

The Subsidiarity Steering Group, advised by the Committee of the Regions' Subsidiarity Expert Group, identified five priority initiatives in the 2021 subsidiarity work programme<sup>30</sup>.

In 2021, the Committee of the Regions adopted opinions covering what it sees as two of the most sensitive legislative proposals with regard to subsidiarity: the new Pact on migration and asylum<sup>31</sup> and the proposal for a Directive on adequate minimum wages in the EU<sup>32</sup>. After consulting its Subsidiarity Monitoring Network, the Committee of the Regions concluded that those proposals complied with the subsidiarity principle.

As part of the European Week of Regions and Cities<sup>33</sup> in October 2021, the Committee of the Regions co-organised – together with the Conference of Regional Legislative Assemblies of the EU (CALRE)<sup>34</sup> – a workshop on 'Multilevel governance and active subsidiarity for sustainable recovery and resilience'. The workshop's conclusions, echoed in the Committee of the Regions' resolution on the 2021 Annual Barometer, reaffirmed the need to involve local and regional authorities in evaluating and implementing the Recovery and Resilience Facility and, more specifically, the national recovery and resilience plans, and regretted that this involvement had proven limited to date.

At its December 2021 plenary session<sup>35</sup>, the Committee reiterated its call for the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the Commission on Better Law-Making to be revised to incorporate the multilevel dimension of the European regulatory process, as suggested by the Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently'.

The Committee of the Regions also committed to creating a Committee of the Regions' better regulation toolbox to integrate all its existing better regulation tools (the Subsidiarity Monitoring Network, RegHub<sup>36</sup> and territorial impact assessments<sup>37</sup>) into one governance framework, in order to improve cooperation, links and synergies between the individual tools and actors and to forge stronger links with the Commission's better regulation toolbox (which includes a tool on territorial impacts<sup>38</sup>) and the tools developed by the European Parliamentary Research Service.

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REGPEX had 76 members. See <http://portal.cor.europa.eu/subsidiarity/thesmn/Pages/default.aspx>.

<sup>30</sup> The revision of the Energy Performance of Buildings Directive, the amendments to the Renewable Energy Directive and the Energy Efficiency Directive to implement the 2030 climate targets, the legislative proposal on minimising the risk of deforestation and forest degradation associated with products placed on the EU market and the revision of the Regulation on the trans-European transport network (TEN-T). See <https://portal.cor.europa.eu/subsidiarity/Publications/Documents/Subsidiarity-Work-Programme/2021/COR-2021-00835-00-01-TCD-REF-EN.pdf>.

<sup>31</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020AR4843>

<sup>32</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020AR5859>

<sup>33</sup> <https://cor.europa.eu/en/events/Pages/multi-level-governance-and-active-subsidiarity-for-sustainable-recovery-and-resilience.aspx>

<sup>34</sup> <https://www.calrenet.eu/>

<sup>35</sup> In an opinion reacting to the Communication from the Commission on 'Better regulation: joining forces to make better laws' (<https://webapi2016.cor.europa.eu/v1/documents/COR-2021-04071-00-00-AC-TRA-EN.docx/content>) and a resolution on the Commission Work Programme 2022 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XR5507>).

<sup>36</sup> RegHub (<https://cor.europa.eu/en/our-work/Pages/network-of-regional-hubs.aspx>) also collects evidence for the 'Fit for Future' platform (see Section 2.1 of this report). The Committee of the Regions has three representatives in the Government group of the platform. In 2021, they contributed to the platform's work by proposing topics for its annual work programme, contributing to the platform's opinions and serving as rapporteurs for 3 out of 15 opinions evaluating the implementation of EU legislation on e-procurement, environmental reporting (the INSPIRE Directive) and patient rights in cross-border healthcare.

<sup>37</sup> <https://cor.europa.eu/en/our-work/Pages/Territorial-Impact-Assessment.aspx>

<sup>38</sup> See tool #34 at [https://ec.europa.eu/info/sites/default/files/br\\_toolbox-nov\\_2021\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf).

On the wider subsidiarity agenda, the Committee of the Regions positioned itself in the framework of the Conference on the Future of Europe. It provided a contribution on how to ‘use “active subsidiarity” to better involve parliaments, regions and cities in the shaping of European policies’<sup>39</sup>.

## 2.5. THE COURT OF JUSTICE OF THE EUROPEAN UNION

In 2021, the Court of Justice did not render any significant judgments in relation to the principles of subsidiarity and proportionality.

### 3. APPLICATION OF THE SUBSIDIARITY CONTROL MECHANISM BY NATIONAL PARLIAMENTS

The Commission received **16 reasoned opinions** from national Parliaments in 2021<sup>40</sup>. This is more than in the last 2 years (with 9 in 2020 and no reasoned opinions in 2019), but fewer than in previous years (2016-2018), in absolute numbers<sup>41</sup> and in proportion to the overall number of opinions sent by national Parliaments<sup>42</sup> (see also the ‘Types of opinions’ chart in Section 4).

Of the 16 reasoned opinions received in 2021, **9** related to the ‘**Fit for 55’ package**, **3** to the **European Health Union Package**, **2** to the **Pact on migration and asylum**, **1** to the proposal for a Directive on **adequate minimum wages** in the EU, and **1** to the proposal amending the **VAT Directive** as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive.

The 9 reasoned opinions relating to proposals from the ‘**Fit for 55’ package**, adopted by the Commission on 14 July 2021, came from 4 national Parliaments<sup>43</sup> and covered 13 different proposals. Most of these related to the part of the package that touches upon solidarity between Member States, with the most frequently expressed concerns being an insufficient assessment of impacts and a lack of evidence for the added value of European action. However, no individual proposal triggered more than three reasoned opinions, and thus none reached the threshold for an aggregated response by the Commission<sup>44</sup>, let alone for a ‘yellow card’<sup>45</sup> that would require the Commission to give reasons for maintaining, changing or withdrawing its proposal.

The Irish Houses of the *Oireachtas* sent two reasoned opinions on this package, each covering six proposals. In the first one<sup>46</sup>, they argued that the proposals do not comply with the principles of subsidiarity because the Commission had not adequately met the procedural requirements to provide a detailed statement with sufficient quantitative and qualitative indicators, to allow national Parliaments to fully assess all the implications of EU-wide proposals of this nature. In

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<sup>39</sup> <https://futureu.europa.eu/processes/Democracy/f/6/proposals/114517>

<sup>40</sup> This number refers to the total number of opinions received from parliamentary chambers under Protocol No 2. See also footnote 15 and Annex 1 for the list of Commission documents on which the Commission received reasoned opinions.

<sup>41</sup> 2018: 37 reasoned opinions; 2017: 52 reasoned opinions; 2016: 65 reasoned opinions.

<sup>42</sup> 2021: 4.4% (16/360); 2020: 3.5% (9/255); 2019: none; 2018: 6.5% (37/569); 2017: 9% (52/576); 2016: 10.5% (65/620).

<sup>43</sup> Czech *Senát*, Irish Houses of the *Oireachtas*, Swedish *Riksdag* and French *Sénat*.

<sup>44</sup> The Commission has committed to reply with an aggregated response if a proposal triggers a significant number of reasoned opinions (i.e. at least 4 reasoned opinions representing at least 7 votes) but has not reached the number of votes necessary to trigger a ‘yellow card’.

<sup>45</sup> The ‘yellow card’ threshold is reached when reasoned opinions represent at least a third of all votes allocated to the national Parliaments (18 out of 54). Each national Parliament has two votes; in the case of a bicameral system, each chamber has one vote.

<sup>46</sup> Covering COM(2021) 552 final, COM(2021) 556 final, COM(2021) 559 final, COM(2021) 561 final, COM(2021) 562 final and COM(2021) 567 final.

the second one<sup>47</sup>, on other items in the package, the Houses of the *Oireachtas*' main concern was that the 'necessity' and 'greater benefits' of the proposals in contrast to measures taken at Member State level had not been adequately established and that the proposals were therefore neither proportionate nor compliant with the principle of subsidiarity. They also expressed specific concerns in relation to the proposal for a new separate emissions trading system for the road transport and buildings sectors and the allocation of revenue through the Social Climate Fund, addressed further in the corresponding paragraphs below.

In its replies, the Commission clarified the necessity and greater benefits of these proposals and explained that all of them were based on the Commission's Communication on the 2030 Climate target plan<sup>48</sup>, which was accompanied by an extensive impact assessment underpinning a comprehensive plan to responsibly increase the EU's binding target for 2030 to a net emissions reduction of at least 55%. Each of the proposals covered by the reasoned opinion was supported by a specific impact assessment. The Commission also pointed out that it had endeavoured to combine the effects of the different policy proposals in a Member State scenario assessment that tries to capture their combined impact (the 'MIX' scenario). All of this information is publicly available online<sup>49</sup>.

On the **Social Climate Fund**<sup>50</sup>, the Swedish *Riksdag* questioned the climate benefit of the measure, as direct income support would not necessarily lead to reduced emissions and contribute to the common targets. It also criticised the direct linking of household income support at national level to the EU budget. In its reply, the Commission explained that the Social Climate Fund was proposed to address the potential uneven social impact that a new emissions trading system could have both within and between Member States. The Fund's objectives should be achieved through investment support and temporary income support. However, there would be no payments from the EU budget directly to citizens. Member States would receive support from the EU budget and would subsequently pay the temporary direct income support from their national budgets, and any such schemes would be set up and managed by national authorities according to national legislation and regulation.

The Irish Houses of the *Oireachtas* questioned the Commission's methodology for calculating financial allocations for Member States from the Social Climate Fund, given a lack of relevant national data. In its reply, the Commission explained that the specific needs of the different Member States were reflected in the allocation methodology. The fund's operation would also ensure that Member States can take measures to complement climate action at EU level. They are best placed to design and select the measures and investments that reflect national specificities.

The Czech *Senát* considered that the proposal for a recast of the **Energy Taxation Directive**<sup>51</sup> interfered with Member States' tax powers in a number of ways: i) by not allowing Member States to set different tax rates for energy products in the same category; ii) the mechanism of automatic indexation of tax levels infringed on Member States' tax powers by precluding a rational tax policy especially where there is high inflation; iii) minimum tax levels constitute an essential element and should therefore be adjusted only by a legislative act, not by a delegated act of the Commission; and iv) the definition of vulnerable households that could benefit from tax reductions was not flexible enough and limited significantly Member States' options for dealing with the social impacts of the Directive.

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<sup>47</sup> Covering COM(2021) 551 final, COM(2021) 554 final, COM(2021) 555 final, COM(2021) 557 final, COM(2021) 558 final and COM(2021) 568 final.

<sup>48</sup> COM(2020) 562 final.

<sup>49</sup> [https://energy.ec.europa.eu/data-and-analysis/energy-modelling\\_en](https://energy.ec.europa.eu/data-and-analysis/energy-modelling_en)

<sup>50</sup> COM(2021) 568 final.

<sup>51</sup> COM(2021) 563 final.

The Commission replied that the proposal retained the flexibility for Member States to adapt national legislation to suit their specific context and needs. The proposed tax structure would group energy products and electricity into categories and rank them according to their environmental performance, and groups of products with similar characteristics (such as fossil fuels) would have the same tax treatment. However, Member States would be free to set their levels of taxation above the minima as they see fit, as long as they respect this ranking. The proposed indexation mechanism, based on a harmonised index from Eurostat, would maintain the relevance of the minimum tax rates and their real value over time. Lastly, the possible tax exemption for vulnerable households would be linked to a harmonised criterion but the application of this criterion would depend on national situations.

In its reasoned opinion on the revision of the EU **Emissions Trading System Directive**<sup>52</sup>, the Czech *Senát* considered that the impact assessment and analysis accompanying the Commission's legislative proposals did not include country-specific analyses of impacts. It claimed that the Commission had not sufficiently taken into account the negative social and economic effects of introducing the emissions trading in the road transport and buildings sectors in Member States with lower purchasing power, especially in view of the absence of mechanisms to prevent speculative trade.

In its reply, the Commission explained that the policy scenario, which combines the different policy proposals, is built on publicly available country-specific data. The Commission had proposed introducing a carbon price in addition to policies at national level because previous years had shown that existing European and national policies to reduce emissions in road transport and buildings sectors did not deliver sufficient results to achieve the 55% emission reduction target by 2030. If applying carbon pricing for greenhouse gas emissions from buildings and road transport were to have an uneven social impact both within and among Member States, the Social Climate Fund would address these impacts on the most vulnerable people and households.

The Irish Houses of the *Oireachtas* argued that the proposed emissions trading system would likely not provide a comparable level of revenue as the national carbon tax and would therefore impact upon Ireland's ability to implement climate measures to reduce greenhouse gas emissions and meet its national target of climate neutrality. Member State action would be more effective than EU action. The Commission replied that the new emissions trading system would not prevent Member States from implementing more ambitious national carbon pricing policies by means of taxation if they wished so.

On the proposal for a Regulation on the **deployment of alternative fuels infrastructure**<sup>53</sup>, the Czech *Senát* considered that the Commission had not proved that the proposed binding targets for infrastructure dedicated to heavy-duty vehicles were realistically achievable with a reasonable cost for Member States, and thus had failed to demonstrate the real added value of the chosen approach at EU level. In its reply, the Commission explained that the binding targets would only apply to the European core highway network (the 'TEN-T network'), and that equipping it with appropriate infrastructure would require action at EU level due to its transnational character and Europe-wide importance. While the proposed Regulation left it to the discretion of Member States to determine the means to achieve the targets, Member States that envisaged co-funding could make use of funds provided by the Recovery and Resilience Facility.

On the energy part of the 'Fit for 55' package – i.e. the proposals on the **Renewable Energy Directive**<sup>54</sup> and on the **Energy Efficiency Directive**<sup>55</sup> –, the Commission received two reasoned

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<sup>52</sup> COM(2021) 551 final.

<sup>53</sup> COM(2021) 559 final.

<sup>54</sup> COM(2021) 557 final.

opinions, from the Swedish *Riksdag* on the first proposal and from the Czech *Senát* on both proposals. They criticised the detailed level of regulation (*Riksdag*), and considered that the specific situations in Member States were not taken into account (*Senát*). With these proposals, more cost-effective and efficient solutions would be excluded (*Riksdag, Senát*). Furthermore, the targets were questioned on substance, especially in the heating sector, for example regarding district heating<sup>56</sup> (*Senát*). On renewables, the *Senát* underlined that given the geographical situation of Czechia and the limited potential for renewable energies in the country, nuclear energy should be recognised as sustainable in the EU taxonomy, as well as gas for a transitional period.

The Commission argued that EU action is justified in line with Article 191 of the Treaty on the Functioning of the European Union, as coordination at EU level increases energy security and environmental and climate benefits. An effective legislative framework and a coordinated and harmonised approach at EU level were needed to meet the headline EU energy efficiency target. Member States would retain flexibility in terms of selecting their policy mix, sectors and individual measures to achieve the required energy savings, by taking into account their national context and specificities. The binding 9% EU reduction target relating to primary and final energy consumption was necessary as a part of the legislative package that will lead to the 55% reduction of greenhouse gas emissions.

On the proposal amending the Regulation on **greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF)**<sup>57</sup>, the French *Sénat* voiced concerns, while recognising that setting a climate neutrality target for the EU by 2050 had EU added value. It considered that empowering the Commission, for the 2026-2029 period, to adopt implementing acts with potentially unlimited scope to impose binding CO<sub>2</sub> levels for agricultural activities on each Member State did not respect the principles of subsidiarity and proportionality. In addition, it stated that the governance arrangements associated with setting Member States' targets for the 2026-2030 period did not sufficiently set out the monitoring procedures for national Parliaments.

In its reply, the Commission explained that it had proposed a target for 2030 in line with a trajectory towards a climate-neutral land sector in 2035 and that the proposed distribution between Member States was based on two elements: i) each Member State maintains its recent level of removals and reported emissions (i.e. the average for the 2016 to 2018 period) – representing the same starting level as applied under the Effort Sharing Regulation; ii) the gap to be filled to reach the EU target in 2030 will be distributed in proportion to the area of managed land in each Member State. The Commission clarified that the proposal did not go beyond what is necessary to achieve the targets. On governance, the Commission explained that with the transition to annual national targets for the land use, land use change and forestry sector in the 2026 to 2030 period, principles similar to those prevailing in the compliance framework under the Effort Sharing Regulation (EU) 2018/842 would be introduced. Member States would be asked to submit national plans in which they detail their contribution to meeting the 2035 target. Finally, in the exercise of its implementing powers, the Commission flagged that it was assisted by a Climate Change Committee, in which all Member States were represented.

The French *Sénat* issued reasoned opinions on each of the three proposals in the **European Health Union Package**. It criticised what it saw as an encroachment on national competences in the proposal for a Regulation on a **reinforced role for the European Medicines Agency**<sup>58</sup>. The

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<sup>55</sup> COM(2021) 558 final.

<sup>56</sup> District heating or cooling means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from central or decentralised sources through a network to multiple buildings or sites in a district. See definition in Article 2(19) of the Directive (EU) 2018/2001.

<sup>57</sup> COM(2021) 554 final.

<sup>58</sup> COM(2020) 725 final.

*Sénat* considered that the Commission’s envisaged right to take all the necessary measures to mitigate the effects of actual or potential shortages of drugs or medical devices, considered as critical in a context of health emergency, conflicted with Members States’ competence to provide health and medical care services, in accordance with Article 168(7) of the Treaty on the Functioning of the European Union. In the proposal for a Regulation on the **European Centre for disease prevention and control**<sup>59</sup>, the *Sénat* criticised an alleged EU harmonisation of laws or regulations needed for the interoperability of national preparedness and response plans for serious cross-border threats to health as being contrary to the Treaties and, with reference to the impact assessment, questioned the centre’s capacity to undertake evaluations and audits. On the proposal for a Regulation on **serious cross-border threats to health**<sup>60</sup>, the *Sénat* criticised the use of implementing acts and pointed to a conflict of competences and uncertainties as to the coordination with the EU integrated political crisis response mechanism.

In its reply, the Commission argued against the view that the proposed Regulation on the European Medicines Agency infringed on the responsibilities of the Member States under Article 168(7) of the Treaty on the Functioning of the European Union, as public health emergencies of the magnitude of the COVID-19 crisis have repercussions on all Member States, which individually are not able to provide a sufficient response. Coordinated EU-level monitoring of possible shortages could help Member States to better prepare for a sudden surge in demand, avoid export restrictions within the single market, prevent the creation of excessive and disproportionate reserves, and allocate resources more efficiently at national and European levels. None of its proposals would require the harmonisation of national preparedness plans, laws or regulations. The implementing measures merely related to procedures and would neither give additional powers to the Health Security Committee nor render binding the Health Security Committee’s Opinions.

As in 2020, the new **Pact on migration and asylum**<sup>61</sup> also triggered reasoned opinions in 2021, from the Slovakian *Národná rada* on the proposal on asylum and migration management<sup>62</sup> and from the Italian *Senato della Repubblica* on the five legislative proposals composing the package<sup>63</sup>. The *Národná Rada* considered that there had been a breach of the subsidiarity principle because the proposal failed to identify the legal basis for the distribution key and for the competences of the European Agency for Asylum and the European Border Coast Guard. It also questioned the use of delegated acts and argued that each Member State was competent to decide on the admission of persons to its own territory, based on its national asylum laws. The *Senato della Repubblica* saw a breach of subsidiarity insofar as the proposals showed a manifest asymmetry between obligations and solidarity and did not solve the current problems and therefore action at EU level had no added value. On proportionality, the *Senato* claimed that the ‘pre-entry’ system risked excessively affecting the national legal system and the judicial protection in the country of entry; that the threshold, below which the border procedure must be activated, meant that almost all maritime migrants would be subject to the border procedure instead of relocation procedures; and that regulation of the mechanism for sponsorship of returns increased costs and red tape for the Member State of entry.

In its replies, the Commission explained that the distribution key was not a new element and that the European Union Agency for Asylum and the European Border and Coast Guard Agency

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<sup>59</sup> COM(2020) 726 final.

<sup>60</sup> COM(2020) 727 final.

<sup>61</sup> COM(2020) 609 final, COM(2020) 610 final, COM(2020) 611 final, COM(2020) 612 final, COM(2020) 613 final, COM(2020) 614 final, C(2020) 6467 final, C(2020) 6468 final, C(2020) 6469 final, C(2020) 6470 final and COM(2020) 758 final.

<sup>62</sup> COM(2020) 610 final.

<sup>63</sup> COM(2020) 610 final, COM(2020) 611 final, COM(2020) 612 final, COM(2020) 613 final, COM(2020) 614 final.

(Frontex) would only facilitate the operational aspects of an implementing act. On the delegated acts, the Commission emphasised that these provisions were based on the Dublin III Regulation and did not change the rules currently in force. It also noted that Article 78(3) of the Treaty on the Functioning of the European Union adds a specific option for the Council to act if there is an emergency characterised by a sudden increase in arrivals of nationals of third countries. Only if a return from the territory of the benefiting Member States were unsuccessful would the sponsoring Member State be asked to transfer the irregular migrant onto its territory to continue efforts to return the migrant.

The Commission considered that the pact strikes the right balance between responsibility and solidarity, since a number of exceptions ensured the flexibility of the border procedure and the cases where it must be applied. The responsibility criterion linked to the first country of entry should be considered in combination with the other responsibility criteria. The purpose of the pact's solidarity mechanism was also to reduce the number of people present in Member States with a high number of arrivals and to provide support in building capacity, operations and measures in the field of external relations where these could affect migration flows towards particular Member States. Return sponsorship would not increase the costs for the benefiting Member State.

On the proposal for a Directive on **adequate minimum wages in the EU**<sup>64</sup>, adopted on 28 October 2020, the Commission received a third reasoned opinion, from the Maltese *Kamra tad-Deputati*, following the two reasoned opinions already received in 2020<sup>65</sup>.

The *Kamra tad-Deputati* challenged the choice of legal basis. In terms of subsidiarity, it considered that the objectives of the proposal could be effectively achieved by Member State action, given the differences in wage setting. The proposal, by contrast, could have negative effects, such as making the collective bargaining process more challenging and increasing the risk of industrial conflict in some sectors.

The Commission explained that the majority of Member States were faced with the problem of insufficient adequacy and/or coverage of minimum wages, and action at national level had proven insufficient to address the problem. It highlighted the large differences in standards for accessing adequate minimum wage protection and that such discrepancies could be best addressed at EU level. Member States with a collective bargaining coverage below 70% would have to provide a framework of enabling conditions and draw up an action plan to promote collective bargaining, but otherwise the design of the framework and of the action plan would be entirely in the hands of individual countries.

On the proposal **amending the VAT Directive** as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that Directive, the Swedish *Riksdag* reaffirmed in a reasoned opinion the importance of the unanimity requirement on taxation and considered that the decision-making procedure proposed by the Commission would mean a transfer of power from the national to the EU level in an area which is central for national sovereignty, exceeding what was necessary to achieve the proposal's objectives.

The Commission replied that the non-harmonised application by the Member States of concepts found in the VAT Directive hampered the smooth functioning of the internal market and was likely to lead to double taxation or non-taxation, and that it was not possible for Member States alone to address these problems. The proposal provided for the adoption of implementing acts by the Commission only in relation to a limited set of rules implementing the provisions of the VAT

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<sup>64</sup> COM(2020) 682 final.

<sup>65</sup> See Section 3 of the 2020 report for further information.

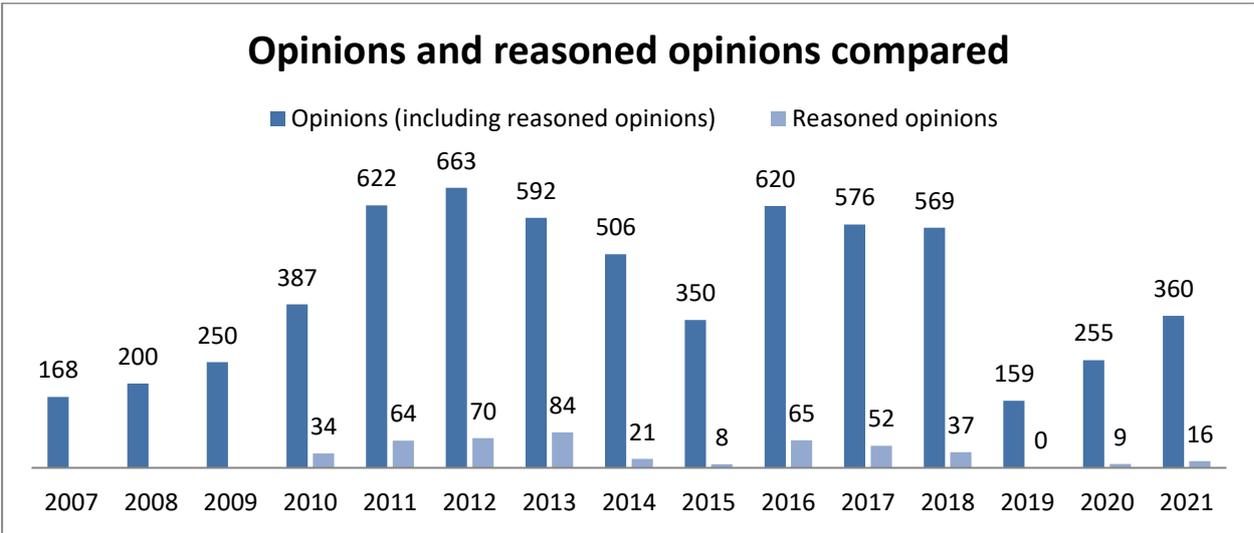
Directive, for which a uniform application of the concepts in the EU VAT legislation was required. Qualified majority voting and comitology procedures were already used in relation to indirect taxation, and comitology was the long-standing standard approach used in EU law for facilitating the emergence of a common view and practice.

**4. WRITTEN POLITICAL DIALOGUE WITH NATIONAL PARLIAMENTS**

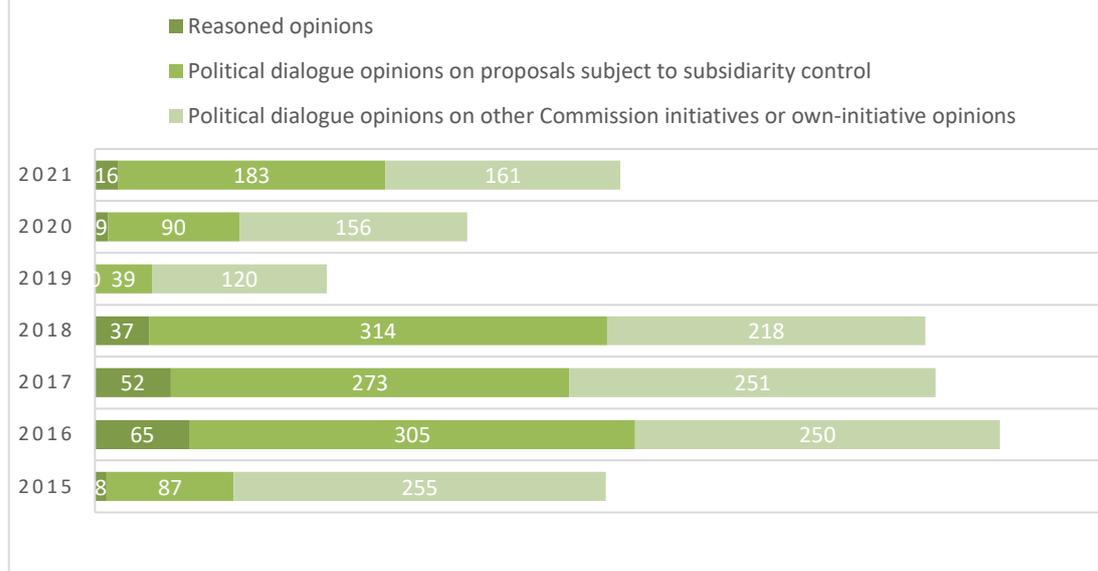
In addition to the subsidiarity scrutiny mechanism anchored in Protocol No 2 to the Treaties, the Commission’s relations with national Parliaments also include an array of further activities, notably the political dialogue that was put in place in 2006. This includes written exchanges on any Commission initiative that national Parliaments want to give input or comment on and oral political dialogue, further described in Section 5 below.

**General observations**

In 2021, national Parliaments sent 360 opinions to the Commission. This represented a significant increase compared to the 2 previous years (255 in 2020 and 159 in 2019) but was still fewer than in the middle years of the previous Commission’s mandate (569 in 2018, 576 in 2017 and 620 in 2016).



## Types of opinions of national Parliaments



Of these 360 opinions, 199 (55.3%), including the 16 reasoned opinions (4.4%), related to those Commission legislative proposals which were subject to the subsidiarity control mechanism<sup>66</sup>. This is a much higher number and percentage than in the 2 previous years, likely a consequence of the increase in the number of legislative proposals presented by the Commission.

The remaining 161 opinions (44.7%) concerned mainly non-legislative initiatives, such as communications, or were own-initiative opinions not directly related to a Commission initiative, a stable number (156 in 2020) showing that some national Parliaments continued to provide the Commission with valuable forward-looking political input.

The Commission always brings the points raised by the national Parliaments or chambers to the attention of the relevant Commission services and Commissioners and, for legislative proposals, to Commission representatives taking part in the negotiations of the co-legislators.

### Participation and scope

As in previous years, the number of opinions sent to the Commission varied significantly from one national Parliament to another. The 10 most active chambers issued 285 opinions. This is 79% of the total, in line with the average for recent years<sup>67</sup>. The number of national Parliaments or chambers that did not issue any opinions decreased<sup>68</sup> to 8 chambers<sup>69</sup> (out of a total of 39), meaning that 5 Member States<sup>70</sup> – representing less than a fifth of the total – did not engage in the written political dialogue in 2021. This shows a growing interest from national Parliaments in participating in subsidiarity scrutiny and the political dialogue.

<sup>66</sup> For more information on the subsidiarity control mechanism and the political dialogue, see [https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments\\_en](https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments_en). Legislative proposals relating to policies where the EU has exclusive competence are not subject to subsidiarity scrutiny by national Parliaments.

<sup>67</sup> 2020: 85%; 2019: 73%; 2018: 83%; 2017: 74%; 2016: 73%.

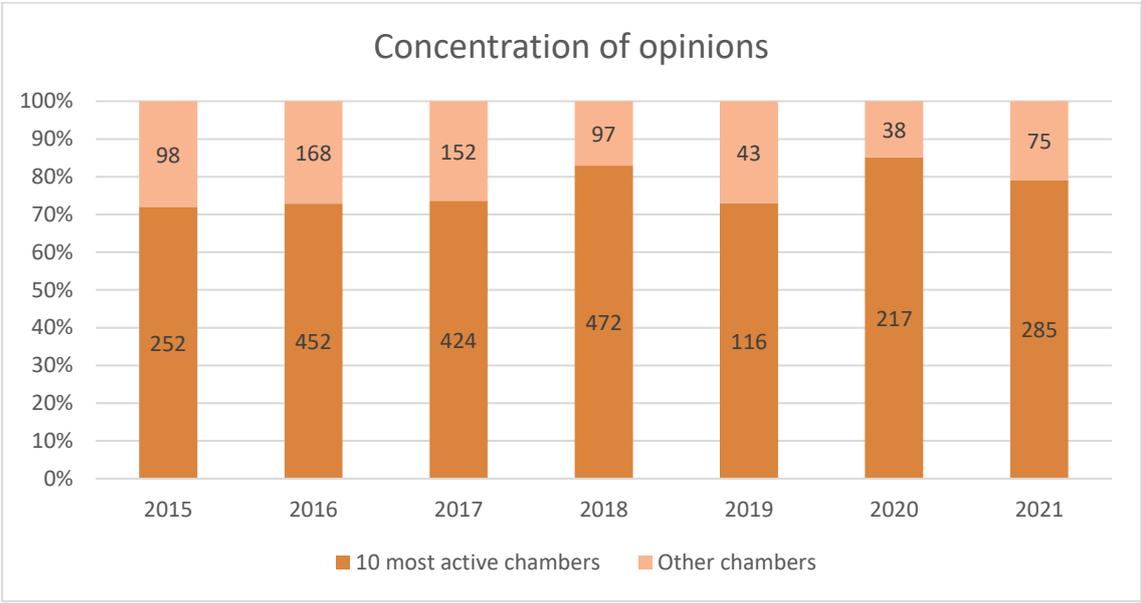
<sup>68</sup> 12 in 2020, 17 in 2019, 10 in 2018.

<sup>69</sup> Belgian *Chambre des Représentants de Belgique* / *Belgische Kamer van volksvertegenwoordigers*, German *Bundestag*, Cypriot *Vouli ton Antiprosopon*, Estonian *Riigikogu*, Latvian *Saeima*, Luxembourgish *Chambre des Députés*, Slovenian *Državni svet* and *Državni zbor*.

<sup>70</sup> The national Parliaments from Cyprus, Estonia, Latvia, Luxembourg and Slovenia.

The 12 national Parliaments or chambers<sup>71</sup> that sent the highest number of opinions in 2021 were: the Spanish *Cortes Generales* (57 opinions), the Portuguese *Assembleia da República* (54 opinions), the Czech *Senát* (47 opinions), the Romanian *Camera Deputaţilor* (27 opinions), the German *Bundesrat* (24 opinions), the Romanian *Senat* (18 opinions), the French *Sénat* (17 opinions), the Dutch *Eerste Kamer* (17 opinions), the Czech *Poslanecká sněmovna* (12 opinions), the Italian *Camera dei Deputati* (12 opinions), the Polish *Senat* (12 opinions) and the Swedish *Riksdag* (12 opinions). These were also among the most active chambers in previous years. Annex 2 details the number of opinions each chamber sent.

The nature of the opinions also varied from one national Parliament or chamber to another. Some focused mostly on the verification of whether a Commission proposal complied with the principles of subsidiarity and proportionality, while others commented in greater detail on the content of the proposals or sent own-initiative opinions. Among the latter group, the Czech *Senát*, the Romanian *Camera Deputaţilor* and *Senat*, the German *Bundesrat*, and the French *Sénat* were particularly active.



**Main topics of the opinions in the political dialogue**

The **packages** that received the highest degree of attention in 2021 were ‘Fit for 55’ (49 opinions), the new Pact on migration and asylum (17 opinions), digital services (17 opinions) and the European Health Union (11 opinions). As for individual **initiatives**, national Parliaments sent most opinions on the Digital Services Act (10 opinions), the proposal on adequate minimum wages (9 opinions), the two proposals on the EU Digital Covid Certificate (8 opinions each), the proposal for an Asylum and Migration Fund (7 opinions), the Digital Markets Act (7 opinions), the proposal for a Social Climate Fund (6 opinions), the amended proposal establishing a common procedure for international protection in the Union (6 opinions) and the proposal on equal pay for equal work (6 opinions). In 6 opinions on the Commission work programme 2021, national Parliaments also indicated to the Commission their own annual priorities for 2021.

Of the 49 opinions on the ‘Fit for 55’ package, 9 were reasoned opinions (already detailed in the previous section), and 14 simply confirmed the proposals’ compliance with the principle of

<sup>71</sup> There was a four-way draw for ninth position.

subsidiarity. Among the initiatives included in the package, the most commented upon were the proposal amending the Regulation on greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF)<sup>72</sup>, the proposal to revise the Energy Efficiency Directive<sup>73</sup>, the proposal for a Renewable Energy Directive<sup>74</sup>, the proposal to revise the Energy Taxation Directive<sup>75</sup>, the proposal for a Regulation establishing a carbon border adjustment mechanism<sup>76</sup>, the proposal for a Regulation establishing a Social Climate Fund<sup>77</sup> and the Communication on the new EU forest strategy<sup>78</sup>.

On the proposal amending the Regulation on **greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF)**, the Commission received three opinions<sup>79</sup> in the framework of the political dialogue. One of these expressed concern about the ability to achieve climate neutrality by 2035, noted a lack of incentives to increase removals (which are necessary to achieve climate neutrality), considered that accurate and harmonised reporting and a penalty system are important elements for achieving the proposed regulation's objectives, and considered that measures to achieve climate neutrality should already be included in the strategic plans of the common agricultural policy for 2023-2027. Another opinion asked the Commission to prepare an impact study describing the specific feasibility of the proposed measures and quantifying the effects of the planned changes, especially the costs and benefits for Czechia.

In its replies, the Commission explained how it plans to achieve climate neutrality and what impact assessments it had done before presenting the 'Fit for 55' proposals. Regarding the 2030 and 2035 targets, it highlighted the importance of receiving ambitious strategic plans from Member States for the common agricultural policy for 2023-2027 and welcomed the support for accurate and harmonised monitoring and reporting, as well as a penalty system, as essential elements for achieving the proposed regulation's objectives.

The Commission received six opinions on the taxation part of the 'Fit for 55' package, three<sup>80</sup> on the proposal for establishing a **carbon border adjustment mechanism**<sup>81</sup> and three<sup>82</sup>, including a reasoned opinion<sup>83</sup>, on the proposal for a **recast of the Energy Taxation Directive**<sup>84</sup>. On the carbon border adjustment mechanism, national Parliaments enquired about its compatibility with World Trade Organisation rules, the impact of the mechanism on EU's competitiveness and the possibility of temporarily maintaining free allowances. The Commission replied that the proposal had been designed in compliance with World Trade Organisation rules, that its impact assessment showed the impact on competitiveness would be low, and that maintaining free allowances would risk dampening the incentive to invest in greener production. On the recast of the Energy Taxation Directive, while the reasoned opinion expressed concern about interference with Member States' tax powers, the two other opinions were supportive, despite an observation about a risk of double taxation. To the latter, the Commission replied that the Energy Taxation Directive and the Emissions Trading System did not overlap, as the former set duties on energy consumption while the latter tackled emissions.

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<sup>72</sup> COM(2021) 554 final.

<sup>73</sup> COM(2021) 558 final.

<sup>74</sup> COM(2021) 557 final.

<sup>75</sup> COM(2021) 563 final.

<sup>76</sup> COM(2021) 564 final.

<sup>77</sup> COM(2021) 568 final.

<sup>78</sup> COM(2021) 572 final.

<sup>79</sup> Polish *Senat*, Czech *Senát* and Spanish *Cortes Generales*.

<sup>80</sup> Czech *Senat*, Spanish *Cortes Generales* and Polish *Senat*.

<sup>81</sup> COM(2021) 564 final.

<sup>82</sup> Czech *Senat*, German *Bundesrat* and Spanish *Cortes Generales*.

<sup>83</sup> Czech *Senat*, already commented upon in the previous section.

<sup>84</sup> COM(2021) 563 final.

On the proposals on the **Renewable Energy Directive**<sup>85</sup> and on the **Energy Efficiency Directive**<sup>86</sup>, in addition to the reasoned opinions already commented upon in the previous section, the Commission received generally supportive opinions from three chambers<sup>87</sup>. Like in the reasoned opinions, some criticism was expressed regarding the targets, in view of the deadlines in the proposals, especially in relation to the heating sector. On renewable energy, one chamber underlined that nuclear energy should be recognised as sustainable in the EU taxonomy, as well as gas for a transitional period. On targets and their implication, the Commission emphasised that the different starting points of Member States had been taken into account when preparing the proposal and, in particular, when proposing targets and benchmarks for renewables overall and in individual sectors. It underlined that in the last decade, thanks to technological advances, the cost of renewable energy generation has decreased very significantly, and that therefore the proposed 40% target for the share of renewables in the EU by 2030 was economically achievable. As regards the role of nuclear energy and natural gas, the Commission noted that the EU Taxonomy Complementary (Climate) Delegated Act includes certain nuclear and gas activities in the category of transitional activities covered by Article 10(2) of the Taxonomy Regulation, subject to strict criteria.

National Parliaments supported the creation of the **Social Climate Fund**<sup>88</sup>, and welcomed the earmarking of 25% of the revenues from the Emissions Trading System for road transport and buildings to support the energy transformation for people experiencing energy poverty. However, one chamber also expressed concerns about the EU-wide definition of ‘energy poverty’ for the purposes of identifying people and entities who need support from the fund and considered that this definition should take better account of the specificities of individual Member States. Another chamber expressed concerns in relation to existing instruments in the EU budget that were designed to accomplish the same objectives.

On the EU-wide definition of ‘energy poverty’, the Commission emphasised the flexibility it gave Member States in identifying vulnerable households, micro-enterprises and transport users according to their specific national situations. Similarly, the Social Climate Fund Regulation emphasises that Member States, in consultation with regional level authorities, are best placed to design and implement social climate plans that are adapted to and focused on their local, regional and national circumstances. On the concerns relating to existing instruments, the Commission clarified that other EU funds that support Member States’ work towards a fair climate transition had different objectives to the Social Climate Fund. They do not have the same time frame and lack the emphasis on specific target groups that the Social Climate Fund has. One major difference compared with many other funds was that the proposed Social Climate Fund had a strong focus on the need for Member States to undertake reforms to justify their use of the fund.

The proposal for the **new EU forest strategy for 2030**<sup>89</sup>, also part of the ‘Fit for 55’ package, triggered three opinions<sup>90</sup>. National Parliaments recognised the importance of forests in the fight against climate change, but raised concerns about increased centralisation and more supranational elements in the strategy, while the Treaty did not set a common forest policy. In addition, the assessment of the impacts of the envisaged measures on Member States was criticised as being lacking and questions were raised as to how the strategy related to the common agricultural policy and whether the proposed measures, especially the proposed product scope, were sufficient to fight global deforestation and illegal logging.

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<sup>85</sup> COM(2021) 557 final.

<sup>86</sup> COM(2021) 558 final.

<sup>87</sup> Polish *Senat*, German *Bundesrat* and Spanish *Cortes Generales*.

<sup>88</sup> COM(2021) 568 final.

<sup>89</sup> COM(2021) 572 final.

<sup>90</sup> Swedish *Riksdag*, Czech *Senát* and Dutch *Eerste Kamer*.

The Commission replied that forests and forestry fell under the shared EU competences and the EU had exercised these competences in several cases, for example the Habitats Directive or the Timber Regulation, while always respecting the principle of subsidiarity. It drew attention to the general impact assessment for strengthening the EU's 2030 net emissions reduction target, and for the specific legislative proposals under the 'Fit for 55' package, for which country-specific impacts were captured, based on an EU reference scenario that Member States had been consulted on. It added that increasing sustainability and taking account of local conditions and needs were common to both the new forest strategy and the new common agricultural policy. As to the Member State competence of enforcing control measures against illegal logging, the Commission would support national authorities and promote the extended use of geospatial intelligence. Lastly, future legislation would have a progressive product scope, allowing a focus on those products and commodities where deforestation and the forest degradation impact was the highest.

In 2021, the Commission continued to receive opinions<sup>91</sup> on the **new pact on migration and asylum**, adopted on 23 September 2020. These opinions showed diverging positions, mainly in relation to the solidarity mechanism. Some chambers issued favourable opinions, one of which asked for some additional information in relation to the judicial protection of refugees and the timelines set out in the proposal. Another opinion expressed doubt about the effectiveness of the mechanism and asked that relocation be made compulsory instead of allowing for return sponsorships. Other chambers were concerned that any mandatory relocations based on quotas could lead to national imbalances, if the objective situation in the respective Member States was not taken into account. Some feared that the border procedure would add additional burden on the Member States, and some warned that this proposal would need additional investment in infrastructures and staff to become operational. In more general terms, chambers also asked for an approach that takes account of the rights of refugees at all procedural steps, including data protection and options for appeal.

In its replies, the Commission underlined the importance of organising return sponsorship effectively. The purpose of this was to ensure through well-coordinated collective efforts by all relevant actors – including for instance Frontex – that returns are carried out as swiftly as possible, offering real support to the benefiting Member State. Member States would always have a choice between at least two types of solidarity measures, so that relocation was neither automatic nor mandatory. Member States would be able to make use of the funds allocated to their national programmes under both the existing Asylum, Migration and Integration Fund and the new Asylum and Migration Fund to support any investments needed to underpin the border procedure. On legal protection and fundamental rights, the Commission emphasised that all safeguards would be guaranteed at all times during the screening, guaranteed by the obligation for Member States to set up an independent monitoring mechanism.

The Commission received 17 opinions<sup>92</sup> from 10 chambers<sup>93</sup> on the **Digital Services Package** (Digital Services Act<sup>94</sup> and Digital Markets Act)<sup>95</sup>. National Parliaments' comments focused most on the protection of consumers and the designation of gatekeepers in large platforms. Several chambers called for clarifications on the coordination between the proposed acts and the

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<sup>91</sup> German *Bundesrat*, Greek *Vouli ton Ellinon*, Maltese *Kamra tad-Deputati* and Portuguese *Assembleia da República*.

<sup>92</sup> One additional Opinion on COM(2020) 842 final from the French *Assemblée nationale* was received on 5 January 2022.

<sup>93</sup> French *Sénat*, Italian *Camera dei Deputati*, Dutch *Eerste Kamer*, Danish *Folketing*, Polish *Senat*, Portuguese *Assembleia da República*, German *Bundesrat*, Czech *Senát*, Czech *Poslanecká sněmovna* and Spanish *Cortes Generales*.

<sup>94</sup> COM(2020) 825 final.

<sup>95</sup> COM(2020) 842 final.

sectoral rules and other existing legislation. One chamber underlined the need to safeguard the rights of Member States to preserve media pluralism. Several chambers expressed concerns regarding the definition of illegal content and its removal, calling either for further legislative proposals regarding legal but harmful content or for leaving the relevant decisions to independent courts. Several chambers wanted to see the proposed package tackle the spread of disinformation.

In its replies, the Commission explained that the new package had been drawn up carefully to fit within the existing legal framework and underlined that Member State authorities would be involved in enforcing it and would be able to ask the Commission to open investigations into designating gatekeepers. In this respect, the designation mechanism was based on quantitative and qualitative criteria and there was a possibility to react to rapid changes in the digital sector by adjusting the thresholds. Regarding media freedom, the Commission underlined that the proposals did not hamper media pluralism in any way but would, on the contrary, strengthen the role of the media in European societies. The Digital Services Act offered a regulatory framework for tackling illegal content, which struck the right balance between imposing clear obligations on digital intermediary services and safeguarding freedom of expression and information. Courts should ultimately decide on the illegality of content to preserve the rights and legitimate interests of all affected parties. As regards harmful content, including disinformation, very large online platforms would be obliged to assess and consequently mitigate the systemic risks that their systems could create.

The **proposals on the EU Digital Covid Certificate**<sup>96</sup> triggered opinions from seven chambers<sup>97</sup>, all of them favourable. However, one opinion also expressed concerns regarding the treatment of personal data and the duration of validity of the Covid certificate. The Italian *Senato* underlined that EU Member States had the right to allow access to their territory according to their legislation, including for people who could not present an EU Digital Covid Certificate. In its replies, the Commission underlined that the Regulation follows the data minimisation principle enshrined in the General Data Protection Regulation. No European database on vaccination, testing or recovery from COVID-19 would be created but the decentralised verification of digitally signed interoperable certificates would be possible. Furthermore, the main Regulation was flexible enough to respond to new scientific evidence and guidance. It would not affect Member States' competence to decide on the most appropriate measures to safeguard public health. However, any restrictions to free movement should not go beyond what is strictly necessary and make no distinction between travellers based on their nationality.

In addition to the reasoned opinions detailed above, the **proposal for a Directive on adequate minimum wages in the European Union**<sup>98</sup> triggered seven further opinions. Some present criticism, others are generally supportive of the proposal's objective to improve the adequacy of minimum wages and expand the access of workers to minimum wage protection as well as present further suggestions<sup>99</sup>. One Parliament considered that the chosen legal basis vested the EU with complementary and supportive competence that could not be applied in relation to pay. The opinion considered that a Council recommendation would have been a more appropriate legal instrument than a directive. Two Parliaments objected to different conditions being proposed for Member States with statutory minimum wages and Member States that use collective bargaining systems, considering this as a breach of the proportionality principle. Some

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<sup>96</sup> COM(2021) 130 final and COM(2021) 140 final.

<sup>97</sup> Czech *Senát*, Czech *Poslanecká sněmovna*, Portuguese *Assembleia da República*, French *Sénat*, Italian *Senato della Repubblica* (2 opinions), Romanian *Senat* and Spanish *Cortes Generales*.

<sup>98</sup> COM(2020) 682 final.

<sup>99</sup> Bulgarian *Narodno Sabranie*, Portuguese *Assembleia da República*, Italian *Senato della Repubblica*, Hungarian *Országgyűlés*, Italian *Camera dei Deputati*, Austrian *Nationalrat* and Greek *Vouli ton Ellinon*.

chambers underlined the need for specific measures, adapted to each Member State, to address wage and social dumping. One chamber called for effective enforcement of statutory minimum wages by strengthening supervision, controls, and field inspections. Another Parliament suggested the need to look more closely at the protection of seafarers working on ships registered under the flag of an EU Member State but permanently residing in third countries.

In its replies, the Commission reassured the Parliaments that the proposed directive did not question the specificities of national systems and traditions, and fully respected national competences and the autonomy of social partners, in line with the principles of subsidiarity and proportionality, and within the limits of EU competence in the field of wages. The Commission emphasised that all Member States, those with statutory minimum wage and those with collective bargaining, would have to verify the need for policy and legislative changes. However, they were free to decide how to comply with the minimum requirements set in the proposal. As for stronger controls, the Commission noted Member States' responsibility regarding statutory minimum wages. The same applied to the design of concrete measures related to collective bargaining.

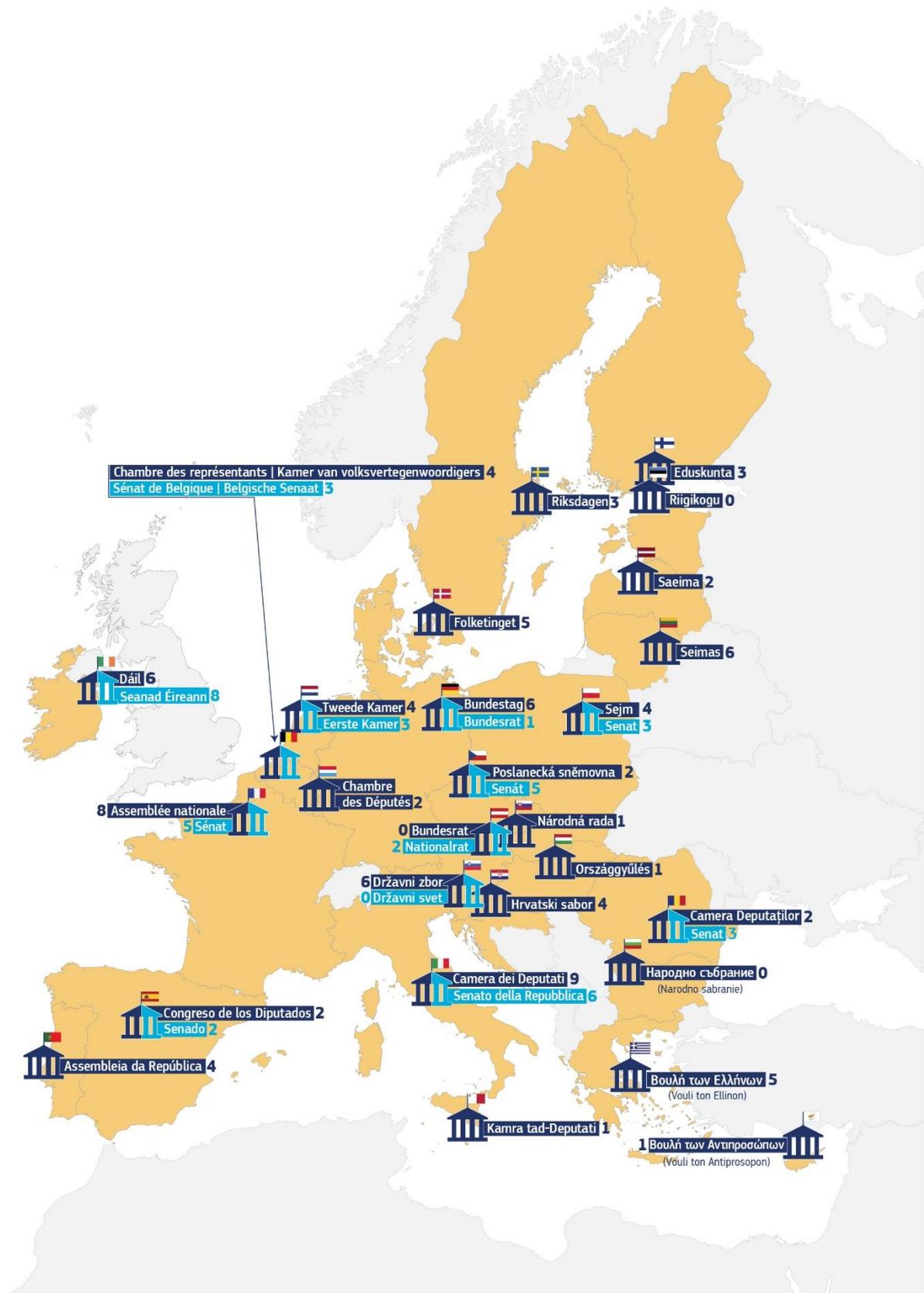
Annex 3 lists the individual Commission initiatives that triggered at least five opinions.

## **5. CONTACTS, VISITS, MEETINGS, CONFERENCES AND OTHER ACTIVITIES**

### **Commission visits to and meetings with national Parliaments**

The oral political dialogue between the Commission and national Parliaments includes various forms of interaction: visits by Members of the Commission to national Parliaments, national Parliaments' delegations visits to the Commission, Commission participation in interparliamentary meetings and conferences (including the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union 'COSAC'), Commission presentations to the permanent representatives of national Parliaments in Brussels, ongoing debates on the Commission work programmes, and European Semester Dialogues.

**Number of visits to and meetings with national Parliaments  
from Members of the Commission in 2021 (total for all Member States: 130)**



In 2021, Members of the Commission had 130 visits to national Parliaments or meetings with national Parliaments' delegations, reaching almost all national Parliaments and chambers, a significant increase compared to the 2 previous years (101 in 2020 and 55 in 2019). The format of these events (72 physical and 58 remote by videoconference) mirrored the development of the COVID-19 pandemic, with most virtual meetings taking place during the first half of the year and most physical meetings taking place during the second half of the year. The 'rule of law' report was the most discussed topic at these events, but the European Pillar of Social Rights, the Conference on the Future of Europe and the Commission's work programme for 2022 were also frequently addressed.

In 2021, Commission officials gave 36 presentations (all of them by videoconference) to representatives of national Parliaments in Brussels on various subjects, such as EU4Health, the EU's vaccine strategy, EU-UK relations, the European Pillar of Social Rights action plan, the Health Emergency Preparedness and Response Authority (HERA), the 'Fit for 55' package, the Conference on the Future of Europe, better regulation, the strategic foresight report or the Communication on the Arctic. The presentations by videoconference not only made it possible to broaden the audience to include officials from national Parliaments in the capitals, thereby increasing the number of participants and improving the Commission's outreach to national Parliaments, but it also allowed for many more presentations to be organised than in previous years (compared to 23 in 2020 – when presentations were both physical and by videoconference – or 13 in 2019 – when they were all physical).

### **Interparliamentary meetings and conferences**

Building on the experience of the previous year, interparliamentary cooperation<sup>100</sup> continued in the form of videoconferences, generally with Members of the Commission participating, including:

- the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)<sup>101</sup>;
- the European Parliamentary Week<sup>102</sup>;
- the Joint Parliamentary Scrutiny Group on Europol<sup>103</sup>;
- various interparliamentary conferences (IPC)<sup>104</sup> and committee meetings (ICM)<sup>105</sup>.

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<sup>100</sup> For more details on these meetings, see the European Parliament's report on relations between the European Parliament and national Parliaments: <http://www.europarl.europa.eu/relnatparl/en/home/annual-reports.html>.

<sup>101</sup> The COSAC – in which the Commission has observer status – is the only interparliamentary forum enshrined in the Treaties, in Protocol No 1 on the role of national Parliaments in the European Union. A summary of its 2021 meetings is provided below. For more information, see <https://secure.ipex.eu/IPEXL-WEB/conferences/cosac>.

<sup>102</sup> The European Parliamentary Week brings together parliamentarians from EU, candidate and observer countries to discuss economic, budgetary, environmental and social matters. It was held from the European Parliament on 22 February and composed of a plenary session, which President von der Leyen attended, and four parallel interparliamentary committee meetings (ICM), attended by Executive Vice-President Timmermans and Commissioners Gentiloni, Hahn and Schmit.

<sup>103</sup> It held its 8<sup>th</sup> and 9<sup>th</sup> meetings on 1-2 February from Lisbon and on 25-26 October from the European Parliament, both of which were attended by Commissioner Johansson.

<sup>104</sup> IPC for the common foreign and security policy and the common security and defence policy, held on 4 March, attended by HR/VP Borrell and Commissioner Urpilainen, and on 9 September, attended by HR/VP Borrell and Commissioner Lenarčič; IPC on COVID-19: health impact and social effects, held from Lisbon on 13 April, attended by Commissioners Kyriakides and Schmit; high-level IPC on migration and asylum in Europe, held on 14 June and on 10 December, both of which were attended by Vice-President Schinas; IPC on rural development, agriculture and territorial cohesion, held from Lisbon on 16 June, attended by Commissioner Wojciechowski; IPC on stability, economic coordination and

In the LXV COSAC plenary meeting, held by videoconference from Lisbon on 31 May-1 June, the Commission was strongly represented by Vice-Presidents Šuica and Schinas and Commissioners Schmit and Gentiloni. Topics discussed included the review of the Portuguese Presidency, the social model in the triple economic, digital and climate transition, the role of national Parliaments in implementing the national recovery and resilience plans, and the state of play of the Conference on the Future of Europe. Vice-President Šuica also attended the LXVI COSAC plenary meeting, held by videoconference from Ljubljana on 29-30 November, and Commissioner Várhelyi participated with a video message. Topics discussed included the review of the Slovenian Presidency, the European perspective for the Western Balkans, the future role of young people in EU decision-making processes and beyond, and the Conference on the Future of Europe.

The two regular COSAC Chairpersons meetings were also held by videoconference, from Lisbon and Ljubljana, on 11 January and 19 July respectively. The January meeting, attended by Commissioner Ferreira, focused on the priorities of the Portuguese Presidency and on recovery and resilience. The September meeting, attended by Commissioner Breton, focused on the priorities of the Slovenian Presidency and cybersecurity.

The videoconference format allowed the COSAC to hold several informal thematic exchanges<sup>106</sup>, in cooperation with the Commission, in addition to the regular events, facilitating a closer political dialogue between national Parliaments and the Commission.

Following the COSAC Chairpersons meeting of 11 January 2021, 34 delegates from national Parliaments sent a co-signed letter of 16 February, asking the Presidents of the European Parliament, the European Council, the Council and the Commission to enshrine an active role for national Parliaments in the Joint Declaration on the **Conference on the Future of Europe**, to be adopted by the three institutions. This Joint Declaration, signed on 10 March 2021, together with the rules of procedure of the Conference ensured a strong parliamentary component. National Parliaments participated with 108 representatives – on a par with the number of representatives of the European Parliament and of citizens in the conference plenary, and the Presidential troika of the COSAC was a permanent observer in the Conference’s executive board. In addition, national Parliaments chaired two of the conference’s working groups, on digital transition and on migration.

In a letter signed 1 June 2021, the COSAC Troika (Germany-Portugal-Slovenia) welcomed these arrangements for national Parliaments.

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governance in the European Union, held from Ljubljana on 28 September, attended by Commissioners Hahn and Gentiloni.

<sup>105</sup> ICM on the occasion of the 2021 International Women’s Day, attended by President von der Leyen (4 March); ICM on ‘reform of European electoral law and Parliament’s right of inquiry’, attended by Vice-President Jourová (22 June); ICM on ‘turning the tide on cancer: the view of national parliaments on Europe’s beating cancer plan’, attended by Commissioner Kyriakides (27 September); ICM on artificial intelligence and the ‘digital decade’, attended by Executive Vice President Vestager (8 November); ICM on the expectations of national Parliaments for the Conference on the Future of Europe, attended by Vice-President Šuica (9 November); ICM on foreign interference in all democratic processes in the European Union, including disinformation (9 November); ICM on the development of CAP strategic plans in each Member State, attended by Commissioner Wojciechowski (18 November); ICM on eliminating violence against women; ICM on 9 December on the situation of the rule of law in the EU, attended by Commissioner Reynders (30 November).

<sup>106</sup> In 2021, six such events took place, involving Mr Barnier on the EU-UK Trade and Cooperation Agreement (25 January), Vice-President Jourová on the European Action Plan on Democracy (28 January), Commissioner Kyriakides on the European Health Union (8 February), Executive Vice-President Dombrovskis on the trade policy review and the Recovery and Resilience Facility (7 April), Executive Vice-President Vestager on digital priority topics, in particular the Digital Services Act (12 October), and Commissioner Simson on a green and just energy transition (9 November).

On the Conference, the Commission has engaged with national Parliaments mainly through the COSAC (with Vice-President Šuica delivering keynote speeches at several interparliamentary events) and has drawn on comments and suggestions put forward in two opinions<sup>107</sup> and a joint statement<sup>108</sup>. In this input, national Parliaments regretted that their representatives were only granted observer status without voting rights on the executive board and called for the conference to include national Parliaments from Western Balkans countries aspiring to EU membership. They also called for institutional issues to be addressed at the conference, such as extending the eight-week subsidiarity scrutiny period and introducing a ‘green card’ allowing Parliaments to suggest new initiatives or amendments to existing ones.

### **Ratification of the Decision on own resources**

The Decision on the system of own resources of the Union<sup>109</sup> was adopted by the Council on 14 December 2020 and all Member States had to approve it in accordance with their respective constitutional requirements before it could enter into force<sup>110</sup>. In 22 Member States<sup>111</sup>, this involved parliamentary ratification. The previous ratification took more than 2 years to complete<sup>112</sup>. This time, given the urgency to launch the NextGenerationEU recovery instrument, within 6 months, by 31 May 2021, all Member States had effectively notified the Council of their ratification. On 1 June 2021, the Decision entered into force and borrowing for the NextGenerationEU recovery instrument on the markets could begin.

In line with national constitutional and political contexts, national Parliaments were involved throughout the procedure, from ratifying the Decision on own resources to the start of funding for recovery projects. In some Member States, there was a debate on whether the recovery plan would set a precedent for EU borrowing or was a one-off solution. In one case, the ratification procedure triggered proceedings before the Constitutional Court in that country<sup>113</sup>. National Parliaments also played a significant role in the approval process for the national recovery and resilience plans, in line with each Member State’s constitutional set-up, in mandating their Finance ministers for the Council meetings adopting implementing decisions with which the funds could be disbursed. Commission President von der Leyen also underlined in her statement at the COSAC plenary meeting in December 2020 that national Parliaments’ experience and input could be very valuable in drawing up and implementing the plans<sup>114</sup>.

## **6. THE ROLE OF REGIONAL PARLIAMENTS**

Regional Parliaments indirectly contribute to the Commission’s relations with national Parliaments. Under Protocol No 2, when carrying out the subsidiarity check for draft EU legislative acts with a view to issuing reasoned opinions, it will be for each national Parliament to consult, where appropriate, regional Parliaments with legislative powers.

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<sup>107</sup> Czech *Poslanecká sněmovna* and German *Bundesrat*.

<sup>108</sup> Statement by 12 Speakers of Parliaments from south-east Europe and from the Visegrád Group of countries, see <https://v4.parlament.hu/en/-/10th-meting-of-speakers-of-parliaments-of-southeast-european-countries-with-the-participation-of-the-speakers-presidents-of-the-v4-parliaments-24-september-2021?redirect=%2Fen%2F>.

<sup>109</sup> Council Decision (EU, Euratom) 2020/2053 – OJ L424, 15.12.2020.

<sup>110</sup> According to Article 311 of the Treaty on the Functioning of the European Union.

<sup>111</sup> Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Finland and Sweden.

<sup>112</sup> The Decision was adopted in May 2014 and entered into force in October 2016.

<sup>113</sup> On 15 April 2021, the German Constitutional Court (*Bundesverfassungsgericht*) decided not to issue a temporary injunction against the ratification of the Own Resources Decision.

<sup>114</sup> [https://youtu.be/qxg\\_cGIOiA?t=388](https://youtu.be/qxg_cGIOiA?t=388)

Members of regional Parliaments are also represented in the Committee of the Regions, which carries out monitoring work through the Subsidiarity Monitoring Network and its online platform designed to support participation by regional Parliaments with legislative powers in the early warning mechanism on subsidiarity (REGPEX)<sup>115</sup>. They also participate, through the RegHub network, in the Commission’s ‘Fit for Future’ platform, which is part of its better regulation work<sup>116</sup>.

While there is no explicit provision made in the Treaties for direct interaction between the Commission and regional Parliaments, the Commission takes their contribution into account. Several regional Parliaments<sup>117</sup> submitted an increasing number of resolutions directly to the Commission on various issues, such as cohesion policy and regional issues, European issues (among them the Conference on the Future of Europe), and global issues like access to vaccines, human rights and minority rights worldwide. Some contributions focused on specific Commission Communications<sup>118</sup> and legislative packages or proposals<sup>119</sup>. In addition to opinions, regional Parliaments participated in Commission’s public consultations, although this channel has so far been actively used by just one regional Parliament that submitted replies to several public consultations launched by the Commission<sup>120</sup>. One regional Parliament used another channel, submitting two opinions through a national Parliament<sup>121</sup>. In addition to written exchanges, Members of the Commission also had meetings with several regional Parliaments<sup>122</sup>.

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<sup>115</sup> <http://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>. For more details on the subsidiarity control-related activity of the Committee of the Regions, see Section 2.4

<sup>116</sup> For more details on ‘Fit for Future’ and ‘RegHub’, see Sections 2.1 and 2.4.

<sup>117</sup> The regional Parliaments of Flanders, Wallonia and the Brussels Capital Region (Belgium), of Bavaria (Germany), of the Balearic Islands and the Basque Country (Spain), of Upper Austria (Austria), of Lower Silesia and Subcarpathia (Poland), of the Liberec Region (Czechia), the Provincial Council of Friesland (Netherlands) and the European Conference of the Presidents of the German-speaking Parliaments from Austria, Germany, Belgium and Italy. Altogether, they submitted 50 resolutions in 2021, compared to 33 in 2020.

<sup>118</sup> European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’ (C(2021)171), ‘A renovation wave for Europe – greening our buildings, creating jobs, improving lives’ (COM(2020) 662 final), ‘Preparedness for COVID-19 vaccination strategies and vaccine deployment’ (COM(2020) 680 final), ‘The European Pillar of Social Rights action plan’ (COM(2021) 102 final), ‘2030 digital compass: the European way for the digital decade’ (COM(2021) 118 final), ‘Pathway to a healthy planet for all EU action plan: ‘Towards zero pollution for air, water and soil’’ (COM(2021) 400 final).

<sup>119</sup> On anti-money laundering and countering terrorist financing (COM(2021) 420 final, COM(2021) 421 final, COM(2021) 423 final; and on the promotion of energy from renewable sources (COM(2021) 557 final).

<sup>120</sup> The *Landtag* of Bavaria submitted contributions for more than 10 public consultations for initiatives under a variety of policies.

<sup>121</sup> The Flemish Parliament submitted opinions on the division in trade agreements and investment treaties and on the European digitalisation agenda. According to Declaration 51 to the Treaties, the Flemish Parliament is a component of the Belgian national parliamentary system. Therefore, the Commission registered these as opinions from the Belgian *Sénat/Senaat* and replied to the latter.

<sup>122</sup> Vice-President Šuica met the German and Austrian regional Parliaments, the South Tyrolean Parliament (Italy), the Parliament of the Belgian German-speaking community (1 February) and the Flemish Parliament (Belgium, 5 May) and Commissioner Breton met the regional Parliament of Saarland (Germany, 22 November).

## 7. CONCLUSION

Summarising the developments in 2021 regarding the scrutiny of the respect for the subsidiarity and proportionality in EU legislation and on the relations between the Commission and national Parliaments allows for the following three main conclusions:

First, the focus of attention of national Parliaments reflects the main political priorities pursued by this Commission, notably the ‘Fit for 55’ package, the New Pact for Migration and Asylum, digital transformation, the European Health Union and the COVID-19 pandemic.

Second, a number of national Parliaments direct significant attention to subsidiarity and proportionality checks on Commission proposals, but concrete concerns on perceived infringement remain rare:

- Concerns expressed by national Parliaments relate in most reasoned opinions not to a concrete perceived infringement of the subsidiarity principle but rather to what they see as an insufficient factual justification for the draft legislative acts that does not allow them to appraise its compliance with the principles of subsidiarity and proportionality.
- The percentage of national Parliaments’ opinions related to subsidiarity control was higher in 2021 than in previous years – in line with the increase in legislative proposals.
- No individual proposal triggered more than three reasoned opinions, far below the threshold for a ‘yellow card’, and less than the number of reasoned opinions for which the Commission has committed to give greater visibility to national Parliaments’ subsidiarity concerns by means of an aggregate response.

Third, the relations between the Commission and national Parliaments are dynamic and wide-ranging, but they are used to differing extents by national Parliaments.

- Judging the contribution of national Parliaments to the political process at EU level only by the quantitative number of opinions under the subsidiarity control and their immediate effects is misleading. They also contribute through multiple channels for oral dialogue in meetings and interparliamentary events.
- Digital means used during the COVID-19 pandemic allowed for more regular and fruitful contact between the Commission and national Parliaments at political and technical level.
- The number of national Parliaments participating in subsidiarity checks and the written political dialogue with the Commission has increased further, continuing a trend since 2019. At the same time, in 2021, there were also eight national Parliaments or chambers (of five Member States) which, for reasons of national constitutional set-up, political traditions or for political choice, did not send any opinions.
- Roughly one third of national Parliaments or chambers issued more than 10 opinions in 2021. As in previous years, almost 80% of all opinions were sent by the 10 most active Parliaments or chambers. Among those, some focused their opinions on whether the subsidiarity and proportionality principles had been respected and did not convey concrete criticism of or suggestions on the Commission’s proposals.
- The number of opinions relating to non-legislative initiatives by the Commission or expressing national Parliaments’ political views or priorities at their own initiative remains at the same high level as in previous years, showing that a number of Parliaments or chambers make very active use of the written political dialogue with the Commission to make their positions known early in the political process. The Commission has facilitated national Parliaments’ contribution to public consultations for preparing legislative proposals by more clearly identifying their input.

Ensuring that EU action is taken only when necessary and only to the extent necessary remains a shared responsibility and endeavour, in which active written and oral dialogue with national Parliaments is vital.