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REPORT FROM THE COMMISSION

ANNUAL REPORT 2020

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

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1. INTRODUCTION

This is the 28th report on the application of the principles of subsidiarity and proportionality, submitted under Article 9 of Protocol No 2 to the Treaty on European Union and to the Treaty on the Functioning of the European Union. As did the 26th and 27th reports, it also covers the Commission's relations with national Parliaments, which play a major role in applying these principles.

In 2020, the Commission continued to integrate the principles of subsidiarity and proportionality at all stages of its policymaking, adopting various new measures, and to help national Parliaments to perform their subsidiarity control in the context of the COVID-19 pandemic.

The Court of Justice of the European Union clarified the application of the principle of proportionality in several judgements, one of which upheld the validity of the Directive on the posting of workers.

Despite disruptions due to the pandemic, there was closer cooperation with national Parliaments in 2020 than during the institutional transition year 2019. The Commission received 255 opinions from national Parliaments, a quarter of them on the response to the pandemic. The single initiative most commented on by national Parliaments was the proposal for a European Climate Law. The Commission continued to participate in inter-parliamentary meetings, to an even greater extent than before, thanks to the possibilities offered by videoconferencing, and the Commission President took part in the Conference of the committees of the national Parliaments of the European Union Member States (COSAC) for the first time since 2013.

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

2.1. The Commission

Better Regulation

The first of the von der Leyen Commission, the 2020 Commission work programme was adopted in January 2020 and adjusted in May 2020 to take account of the COVID-19 pandemic¹. It reiterated the Commission's commitment to evidence-based proposals that are tailored to the needs of citizens and businesses, do not add unnecessary burdens and are easy to implement.

Throughout the year, the Commission continued to apply its 'Better Regulation' agenda and to integrate the principles of subsidiarity and proportionality into all stages of its policymaking. It evaluated existing legislation and policy frameworks before presenting proposals to revise them. These evaluations included assessments of whether existing policy measures remained 'fit for purpose' and to what extent they still complied with the principles of subsidiarity and proportionality.

¹ COM(2020) 37 and COM(2020) 440

The 'Have Your Say' web portal² has proven to be a useful single point of access for citizens and stakeholders to participate in the Commission's policy preparation. Taking on board the views of citizens, businesses and other stakeholders is essential for ensuring the quality of the Commission's proposals. In view of practical difficulties that contributors might encounter with the portal due to the pandemic, the Commission expanded public consultations and provided more feedback opportunities for initiatives to be delivered in 2020 or early 2021, extending, where possible, the consultation period by up to 6 weeks. It also revamped the portal to make it easier to identify and search for initiatives. The portal now also identifies the views of national, regional and local authorities more clearly so that they can be reported comprehensively in impact assessments and evaluations.

The Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently'³ ('the Task Force') recommended doing more, as part of the Regulatory Fitness and Performance programme (REFIT)⁴, to assess the practical, real-life effects of legislation, including delegated and implementing acts. It also recommended having more representatives from local and regional authorities in the expert group supporting this work. This prompted the Commission, in May 2020, to set up the 'Fit for Future' platform, a high-level expert group to advise the Commission on keeping existing legislation fit for purpose, minimising burdens and making sure legislation is future-proof. It benefits from an increased presence of local and regional authorities, through the participation of three representatives of the Committee of the Regions and of its network of regional hubs for EU policy implementation review, RegHub⁵. The group's annual work programme will identify legislation to be assessed, considering also the list established by the Task Force⁶. It will also address legislative density.

The Better Regulation guidelines and 'toolbox'⁷ require the Commission to carry out a subsidiarity analysis when assessing the continued relevance and European added value of existing measures and when considering new initiatives. The Commission analyses both legislative and non-legislative initiatives for subsidiarity and proportionality. All impact assessments, evaluations and fitness checks should include such an analysis.

Impact assessments

The Commission always takes into account the principles of subsidiarity and proportionality in its assessments of the impact of its policy proposals. According to the Better Regulation toolbox, a roadmap or inception impact assessment should be prepared for legislative proposals, including proposals for delegated and implementing acts identified as 'politically sensitive/important' initiatives. An impact assessment supports these acts only when the expected economic, environmental or social impacts of EU action are likely to be significant and the Commission has a margin of discretion with the content of the act. If an impact assessment is not carried out, the

² https://ec.europa.eu/info/law/better-regulation/have-your-say_en

³ On the Task Force's work and follow-up to this work, see https://ec.europa.eu/info/sites/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.pdf as well as Sections 2.1 of the 2018 and 2019 Annual Reports: https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/annual-reports-application-principles-subsidiarity-and-proportionality-and-relations-national-parliaments_en

⁴ On the REFIT platform, see Section 2.1 of the 2019 Annual Report.

⁵ On RegHub, see Section 2.4 below.

⁶ See Annex VI of the Task Force's report on: https://ec.europa.eu/info/sites/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.pdf

⁷ https://ec.europa.eu/info/files/better-regulation-toolbox_en

explanatory memorandum and, where applicable, the analytical staff working document accompanying the proposal cover subsidiarity and proportionality.

The Regulatory Scrutiny Board⁸ does an independent quality control on all impact assessments. In 2020, it issued 41 opinions on impact assessments.

One of these opinions concerned the impact assessment of the proposal for a Directive on the adequate minimum wage in the EU⁹. The Board requested better substantiation of the principles of subsidiarity and proportionality in the proposal.

In its initial opinion, the Board stated that the impact assessment was ‘not sufficiently clear on how the problem analysis assesses the inadequacy of minimum wages across Member States’ and did not ‘sufficiently substantiate how the legislative initiative is in line with the chosen legal base and the subsidiarity and proportionality principles’.

The impact assessment was subsequently revised to better address these aspects. It explains that action at EU level is more effective in strengthening minimum wage-setting systems than action at national level. Such action will help to ensure a level playing field in the single market by tackling large differences in the coverage and adequacy of minimum wages that are not justified by underlying economic conditions, an objective that uncoordinated Member State action cannot sufficiently achieve.

On proportionality, the impact assessment explains that the proposal respects well-established national minimum wage-setting traditions, fully respecting the competences of Member States and social partners to determine the level of their minimum wages, and leaving as much scope as possible for national decisions. The Commission submitted a ‘subsidiarity grid’¹⁰ to the Regulatory Scrutiny Board together with the revised impact assessment.

Evaluations and fitness checks

In 2020, the Commission finalised 33 evaluations, including one fitness check, and the Regulatory Scrutiny Board examined 13 major evaluations, including two fitness checks. These assessments covered many aspects, some particularly relevant on subsidiarity and proportionality. For instance, the evaluation¹¹ of the Industrial Emissions Directive¹², the main EU instrument for controlling and mitigating the environmental and human health impacts of EU industrial emissions, highlighted the significant benefits resulting from action at EU level compared to action at national and sub-national levels only. For example, EU action has ensured a more consistent approach in the adoption of environmentally effective industrial emission standards with relatively limited variation from one Member State to another.

⁸ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en

⁹ COM(2020) 682 final. In 2020, the Commission received two reasoned opinions and additional political dialogue opinions from national Parliaments on this proposal, followed by further opinions in 2021. On the reasoned opinions and the Commission replies, see Section 3 below.

¹⁰ This ‘subsidiarity grid’ was built on a detailed set of questions under three headings: (1) Can the Union act? What is the legal basis and competence of the Unions’ intended action? (2) Subsidiarity Principle: Why should the EU act? (3) Proportionality: How the EU should act. The grid thus reflects the recommendations of the Task Force on Subsidiarity, Proportionality and ‘Doing less more efficiently’.

¹¹ SWD(2020) 181 final, 23.9.2020.

¹² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control (OJ L334, 17.12.2010, p. 17).

Subsidiarity control mechanism¹³

The Commission implemented the commitment it made in response to the Task Force's recommendation that it should exclude the period between 20 December and 10 January when determining the eight-week period for national Parliaments to send reasoned opinions. It did this for the first time over the Christmas/New Year holiday period in 2019-2020, and again over the same period in 2020-2021. As for its commitment to produce aggregate responses to reasoned opinions issued by national Parliaments representing seven or more votes in the subsidiarity scrutiny mechanism, none of the Commission's legislative proposals triggered the number of reasoned opinions necessary to reach that threshold¹⁴.

In a letter to national Parliaments on 8 April 2020, Vice-President Šefčovič acknowledged that, due to the COVID-19 crisis, it was difficult for them to check the compliance of legislative proposals with the subsidiarity principle within the 8 weeks set in Protocol No 2 to the Treaties. He committed to facilitating this in two ways.

- Even if national Parliaments' opinions expressing subsidiarity concerns with legislative proposals (reasoned opinions) were received after the deadline, the Commission would take account of them by bringing them to the attention of the relevant Member of the Commission and by providing a substantial public reply. Three national Parliaments took advantage of this, all of them on the European Climate Law¹⁵.
- The Commission would also inform national Parliaments instantly when adopting a legislative proposal aimed at mitigating the impacts of the COVID-19 crisis, the adoption of which by the European Parliament and the Council might need to take place within less than 8 weeks, in line with the urgency procedure stipulated in Article 4 of Protocol No 1 to the Treaties. It sent such alerts to national Parliaments on seven occasions in 2020.

2.2. The European Parliament

In 2020, the European Parliament formally received 134 submissions from national Parliaments under Protocol No 2 on the application of the principles of subsidiarity and proportionality¹⁶. Of these 134, 13 were reasoned opinions¹⁷ and 121 contributions (submissions not raising concerns about subsidiarity). By comparison, 2019 had seen 62 submissions, none of which were reasoned opinions¹⁸.

Under Annex VI to the European Parliament's Rules of Procedure, the Committee on Legal Affairs (JURI) has full responsibility for ensuring compliance with the principle of subsidiarity. Every 6 months it appoints one of its members as standing rapporteur for subsidiarity on a

¹³ Reasoned opinions sent by national Parliaments in 2021 are examined in section 3 below.

¹⁴ See Section 3 below.

¹⁵ See Section 3 below.

¹⁶ For European Parliament's procedure for dealing with national Parliaments' reasoned opinions, see point 2.3 of the Annual Report 2016 on Subsidiarity and Proportionality.

¹⁷ The European Parliament and the Commission (who registered nine reasoned opinions during the same period) count reasoned opinions differently. A reasoned opinion concerning more than one Commission proposal is only counted by the Commission as 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 concerned.

¹⁸ All submissions from national Parliaments are available on Connect, the European Parliament's database of national parliamentary documents: <http://www.europarl.europa.eu/relnatparl/en/connect/welcome.html>

rotating basis among the political groups. Gilles Lebreton (Identity and Democracy) was the standing rapporteur in the first half of 2020, followed by Karen Melchior (Renew Europe) in the second half of the year. The reasoned opinions received and confirmed as such by the Committee are included for information in the agenda for its next meeting.

The JURI Committee also regularly draws up a report on the Commission's annual reports on subsidiarity and proportionality. The upcoming report, for which Mislav Kolakušić (Non-attached) was appointed rapporteur, will cover 2017, 2018, and 2019¹⁹. The JURI Committee also contributes to the biannual reports by COSAC²⁰ on issues related to subsidiarity and proportionality.

The European Parliamentary Research Service has 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;
- by 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 TFEU, and the cost of no EU action;
- by scrutinising subsidiarity and proportionality aspects when drafting impact assessments, focusing on EU added value.

In 2020, it produced 5 initial appraisals of Commission impact assessments, 1 impact assessment, 13 *ex post* European implementation assessments, 3 'Implementation in action' papers, 2 other *ex post* evaluations, 2 rolling checklists, 2 reports on the cost of non-Europe, 9 European added-value assessments, 5 added-value papers of existing EU policies, 1 European added-value analysis and 6 implementation appraisals. It launched a new publication series on national Parliaments and European affairs, to provide an overview of how national Parliaments are structured and how they process, scrutinise and engage with EU legislation, and published the first two briefings of this series²¹.

2.3. The Council

In its conclusions of 27 February 2020 on 'Better Regulation - Ensuring competitiveness and sustainable, inclusive growth'²², the Council of the European Union ('the Council') 'underlined that, in order to increase efficiency, measures contained in new Commission proposals should always respect fundamental rights and equality before the law, *as well as principles of subsidiarity, proportionality and legal certainty*, and especially take into account the needs of small and medium-sized enterprises (SMEs) including micro-enterprises'.

On the principle of *proportionality*, it further stressed 'the importance of SMEs, including micro-enterprises, as a key driver of innovation, green transition, digitisation, employment, sustainable

¹⁹ 'European Union regulatory fitness and subsidiarity and proportionality - report on Better Law Making covering the years 2017, 2018 and 2019' (2020/2262(INI)).

²⁰ On COSAC, see Section 5 below.

²¹ <https://www.europarl.europa.eu/thinktank/en/researchbypolicyarea.html>

²² Council document ST 6232/20, points 2 and 12. <https://data.consilium.europa.eu/doc/document/ST-6232-2020-INIT/en/pdf>

and inclusive growth and social cohesion in our societies'. It added that 'SMEs', including micro-enterprises', interests and needs should be better identified in all phases of the decision-making process at EU level, in order to ensure that the legislation will be clear and predictable at minimum cost, and proportionate with regard to the size of enterprises'.

On 16 November 2020, the Council adopted 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'²³, pointing out that the principles of subsidiarity and proportionality should always be respected and fostered, as well as the precautionary principle, and referring back to its previous conclusions of May 2016²⁴ on these principles.

In addition to its Treaty obligations, the Council keeps Member States informed of national Parliaments' opinions on Commission legislative proposals. In 2020, the General Secretariat of the Council distributed to the delegations 99 opinions issued in the context of the political dialogue. It received 9 reasoned opinions under Protocol No 2²⁵.

2.4. The Committee of the Regions

On 8 May 2020, the Committee of the Regions ('the Committee') issued a declaration on the response to the COVID-19 crisis²⁶, calling for more support for regional and local authorities and for a collaborative review of health competences in line with the subsidiarity principle. It stressed that, even during the COVID-19 pandemic, emergency measures had to be proportionate, limited in time and subject to democratic control, and respect the principles of subsidiarity and multilevel governance.

On 2 July 2020, the Committee defined its priorities for 2020-2025 in the resolution 'Europe closer to the people through its villages, cities and regions'²⁷, expressing its 'determination to continue to improve the quality of EU legislation and to better anticipate its territorial impact and promote the principle of active subsidiarity'²⁸. It also emphasised that 'the pandemic is demonstrating the importance of properly applying the active subsidiarity principle, as well as the essential role of local and regional authorities on the one hand, and the need for coordination and support at European level on the other'. Looking ahead to 2021, it announced that it would scrutinise new EU policy initiatives to ensure that they incorporate a territorial dimension and meet the EU added-value requirement, in line with the recommendations of the Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently' and the Better Regulation Guidelines.

²³ Council document ST 13026/20, points 3 and 12. <https://data.consilium.europa.eu/doc/document/ST-13026-2020-INIT/en/pdf> and <https://www.consilium.europa.eu/en/press/press-releases/2020/11/16/regulatory-sandboxes-and-experimentation-clauses-as-tools-for-better-regulation-council-adopts-conclusions/>

²⁴ Council document ST 9580/16. <https://data.consilium.europa.eu/doc/document/ST-9580-2016-INIT/en/pdf>

²⁵ The Council counts reasoned opinions the same way as the Commission, whereas the European Parliament uses a different way of counting. See footnote 17 for a full explanation.

²⁶ [Declaration of the European Committee of the Regions on Local and regional authorities as actors of the European response to the COVID-19 crisis.](#)

²⁷ [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](#)

²⁸ On 'active subsidiarity', see pages 7-9 of the Task Force report: https://ec.europa.eu/info/sites/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.pdf ; on the Task Force, see footnote 3.

On 12 October 2020, the Committee published its first edition of the EU Annual Regional and Local Barometer²⁹, focusing mainly on the impact of the COVID-19 pandemic. The report shows that EU regional and local authorities have been on the frontline in tackling the health crisis and also have a key role to play in a successful economic recovery. In its key findings, it calls for greater involvement of regional and local authorities in the governance of EU and national recovery plans, recommending that the European Semester – as the Recovery and Resilience Facility's governance mechanism – incorporate a code of conduct for the involvement of regional and local authorities, in line with active subsidiarity. The report also calls for regions and cities to be closely involved in the preparation of national plans, in order to ensure their complementarity with regional and local recovery strategies. Finally, as a practical application of the active subsidiarity principle, it suggests that the Committee and the Commission organise an annual Recovery and Resilience Forum to ascertain if the recovery plan works for cities and regions.

On 2 July 2020, the Committee adopted a resolution on the Commission work programme for 2021³⁰. It encouraged the Commission to pursue cooperation in order to promote the concept of 'active subsidiarity', including through the Committee's network of regional hubs for EU policy implementation review, RegHub³¹, and by supporting the Committee in developing the project RegHub 2.0 to provide feedback based on user experience of local and regional EU policy implementation. In October 2020, the Committee approved the continuation of this project and welcomed new members to the network³². The Commission's new Fit for Future platform³³ directly incorporates RegHub into its structure as an expert network, while the Committee itself is represented by three of its members in the platform's governance group. This significantly expands the Committee's role and better ensures that the principle of active subsidiarity is applied along the entire legislative cycle³⁴.

The Committee assessed compliance with subsidiarity and proportionality in the eight legislative proposals on which it issued opinions in 2020³⁵. These opinions contained a direct assessment of compliance with subsidiarity and proportionality, or concrete recommendations to improve compliance.

In 2020, the Committee implemented its subsidiarity work programme as a practical annual subsidiarity monitoring instrument. The Subsidiarity Steering Group, chaired by the Committee's former President Karl-Heinz Lambertz, identified five priority initiatives for the 2020 subsidiarity work programme: digital services, the European Green Deal, protecting our environment, social Europe and a new pact on migration and asylum.

The Committee adopted a resolution on 'The Green Deal in partnership with local and regional authorities'³⁶, urging 'achieving tangible results on the ground using multilevel governance and

²⁹ [EU Annual Regional and Local Barometer \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XR2622&qid=1610962068519)

³⁰ OJ C324, 1.10.2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XR2622&qid=1610962068519>

³¹ The Network of Regional Hubs for EU Policy Implementation Review (RegHub) originated from the final report and recommendations of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' (recommendation 8).

³² List of the 46 members on <https://cor.europa.eu/en/engage/Documents/RegHub/new-reghub-2-0-members.pdf>

³³ On this platform, see Section 2.1 above.

³⁴ https://cor.europa.eu/en/engage/Documents/RegHub/RegHub_evaluation_report.pdf

³⁵ Rule 55.2 of the Rules of Procedure, OJ L65, 5.3.2014, p41, <https://cor.europa.eu/en/members/Documents/CoR-Rules-of-Procedure-EN.pdf#search=Rules%20of%20Procedure>

³⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XR4351> (OJ C79, 10.3.2020).

active subsidiarity'. It adopted an opinion³⁷ on the proposal for a Regulation establishing the framework for achieving climate neutrality (European Climate Law)³⁸, stressing the importance of achieving the objective that 'all EU measures adhere to the 'do no harm' principle and, in line with the principle of active subsidiarity, fully respect all levels of government as partners in the European decision-making process, not as stakeholders'. It also adopted an opinion on the European Climate Pact³⁹, considering it a great opportunity for implementing the principle of active subsidiarity, as its very objectives are very much in sync with the main aims of the active subsidiarity approach: to develop an inclusive and constructive way of working that fully realises the potential of the EU's multilayered democratic and governance framework.

In 2020, 18 contributions on subsidiarity and proportionality were submitted to REGPEX, the sub-network of the Subsidiarity Monitoring Network⁴⁰ open to Parliaments and governments of regions with legislative powers to support their participation in the early phase of the legislative process (subsidiarity check). Details of these contributions and links to the Commission proposals they concern are available on the REGPEX website⁴¹.

2.5. The Court of Justice of the European Union

In 2020, the Court of Justice of the European Union (the Court) did not have to pronounce itself on alleged violations of the principle of **subsidiarity**⁴².

In several cases in which the principle of **proportionality** was invoked to challenge EU legislation, the Court recalled that the EU legislature must be allowed broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations. The legality of a measure adopted in those areas can be affected only if the measure is manifestly inappropriate in relation to the objective pursued⁴³.

The Court thus upheld the validity of Directive 2018/957 amending the Posting of Workers Directive⁴⁴ in light of the proportionality principle when rejecting the actions for annulment brought by two Member States⁴⁵. It recalled that the proportionality principle requires that the

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020AR1361> (OJ C324, 1.10.2020).

³⁸ COM(2020) 80 final.

³⁹ <https://cor.europa.eu/EN/our-work/Pages/OpinionTimeline.aspx?opid=CDR-1360-2020>

⁴⁰ <http://portal.cor.europa.eu/subsidiarity/thesmn/Pages/default.aspx> Launched in April 2007, the Subsidiarity Monitoring Network was set up to facilitate the exchange of information between local and regional authorities and the Union level regarding various documents and legislative and political proposals from the Commission. The network serves as an access point, enabling all of its partners not only to obtain information but also to express their views. At the end of 2020, it had 150 members, while REGPEX had 76 members.

⁴¹ <http://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>

⁴² The Court rejected this argument in general terms in its judgment of 10 November 2020 in Case C-644/18, *Commission v Italy*, EU:C:2020:895, paragraph 153.

⁴³ E.g. judgment of 17 September 2020 in Case C-732/18 P, *Rosneft Oil Company and Others v Council*, EU:C:2020:727, paragraph 91.

⁴⁴ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16). In 2016, national Parliaments had sent 14 reasoned opinions on the Commission proposal, triggering the 'yellow card' procedure (see Annual Report 2016 on subsidiarity and proportionality).

⁴⁵ Judgments of 8 December 2020 in Cases C-620/18, *Hungary v European Parliament and Council*, EU:C:2020:1000, and C-626/18, *Republic of Poland v European Parliament and Council*, EU:C:2020:1001.

measures contained in EU legislation be appropriate for achieving its legitimate objectives and not go beyond what is necessary to achieve them⁴⁶.

Referring to the discretion that the EU legislature must be allowed when regulating the posting of workers for the provision of services, the Court considered that the criterion to apply is not whether a measure adopted in such an area was the only or the best possible measure, since the legality of the measure can be affected only if it is manifestly inappropriate in relation to the objective pursued⁴⁷.

The Court held that the EU legislature's broad discretion applies not only to the nature and scope of the contested measures but also, to some extent, to the finding of the basic facts. However, even where it has broad discretion, the EU legislature must base its choice on objective criteria and examine whether the aims pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators.

Draft legislative acts must take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved⁴⁸. The Court considered that the two Member States who contested its legality failed to demonstrate that the amendments made by Directive (EU) 2018/597 went beyond what was necessary to achieve its objectives, namely to ensure the freedom to provide services on a fair basis and to offer greater protection to workers.

The Court not only took into account the legal background against which the contested directive was adopted. It also pointed out that the EU legislature had made no manifest error, since it had taken into consideration all the factors and circumstances relevant to the situation that the Directive was intended to regulate⁴⁹.

3. APPLICATION OF THE SUBSIDIARITY CONTROL MECHANISM BY NATIONAL PARLIAMENTS

The Commission received **nine reasoned opinions** from national Parliaments in 2020⁵⁰. This is more than in 2019 when, for the first time since the subsidiarity control mechanism had been introduced, no reasoned opinion was received. But this is also fewer than in previous years, both in absolute numbers⁵¹ and in proportion to the overall number of opinions sent by national Parliaments⁵² or to the overall number of opinions on Commission proposals subject to the subsidiarity control mechanism⁵³ (see also the chart 'Types of opinions' in Section 4).

⁴⁶ Judgment in Case C-620/18, paragraph 137; Judgment in Case C-626/18, paragraph 94.

⁴⁷ Judgment in Case C-620/18, paragraph 112; Judgment in Case C-626/18, paragraph 95.

⁴⁸ Judgment in Case C-620/18, paragraphs 114-115; Judgment in Case C-626/18, paragraphs 97-98.

⁴⁹ Judgment in Case C-620/18, paragraphs 137-151; Judgment in Case C-626/18, paragraphs 124-139.

⁵⁰ This number refers to the total number of opinions received from parliamentary chambers under Protocol No 2 to the Treaties. A reasoned opinion concerning more than one Commission proposal is only counted as 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 concerned, hence the larger number of reasoned opinions (13) for 2020 mentioned in Section 2.2. See Annex 1 for the list of Commission documents on which the Commission received reasoned opinions.

⁵¹ 2018: 37 reasoned opinions; 2017: 52 reasoned opinions; 2016: 65 reasoned opinions.

⁵² 2020: 3.5% (9/255); 2018: 6.5% (37/569); 2017: 9% (52/576); 2016: 10.5% (65/620).

⁵³ 2020: 9.1% (9/99); 2018: 10.5% (37/351); 2017: 16% (52/325); 2016: 17.6% (65/370).

Of the 9 reasoned opinions received in 2020, three, from the Austrian *Bundesrat*, the French *Sénat* and the Dutch *Eerste Kamer*, concerned the proposal for a Regulation establishing the framework for achieving climate neutrality (**European Climate Law**) adopted by the Commission on 4 March 2020⁵⁴.

This proposal aimed to (i) enshrine the 2050 climate-neutrality objective set out in the European Green Deal in legislation, (ii) set long-term policy direction, (iii) provide predictability for investors and (iv) ensure transparency and accountability. It included measures to keep track of progress and adjust actions accordingly and addressed the pathway to get to the 2050 target, including a 2030 intermediate target to be set on the basis of a comprehensive impact assessment.

The Commission received 9 opinions from 7 chambers⁵⁵ on this initial proposal, including the 3 reasoned opinions, and then 3 opinions from 3 more chambers⁵⁶ on the amended proposal⁵⁷ presented in September to set the Union 2030 climate target to a reduction of net greenhouse gas emissions of at least 55% compared to 1990 levels. Another chamber⁵⁸ replied to the public consultation launched by the Commission from March to June on the level of ambition of the 2030 target.

All three chambers that submitted reasoned opinions rejected the proposed use of delegated acts to set out the trajectory between the 2030 target for reducing greenhouse gas emissions and the 2050 climate neutrality target. Moreover, the *Eerste Kamer* was of the opinion that the use of Article 192(1) of the Treaty on the Functioning of the European Union (the ordinary legislative procedure) rather than Article 192(2) (unanimity) was not commensurate with the importance and scope of the proposal.

Most opinions sent within the political dialogue, while generally supportive of the objectives of the proposal, shared the concerns expressed in the reasoned opinions about using delegated acts to set the 2030-2050 trajectory. Some chambers also requested that the specific energy mix and adjustment potential of each Member State be taken into account⁵⁹, or that the manner and timing of achieving the 2050 objectives be left to Member States⁶⁰. Others urged basing the pathway to reaching the targets on the use of renewable energies rather than on nuclear energy⁶¹ or setting another intermediate target for 2040⁶². Another request⁶³ was to tailor the EU financial support to the financial capacity of each Member State.

⁵⁴ COM(2020) 80 final. These opinions were formally received after the expiration of the eight-week deadline set in Protocol No 2 to the Treaties, on 15 May (*Bundesrat* and *Sénat*) and 26 May (*Eerste Kamer*). The deadline had expired on 5 May, but the Commission nonetheless dealt with them as ‘reasoned opinions’ given the practical difficulties national Parliaments faced due to the COVID-19 crisis. On the Commission’s commitment regarding the deadline, see also Section 2.1, subsection ‘Subsidiarity control mechanism’ above.

⁵⁵ From the Austrian *Bundesrat* (1 reasoned opinion and 1 opinion), the Dutch *Eerste Kamer* (1 reasoned opinion and 1 opinion), the French *Sénat*, the Polish *Senat*, the Czech *Senát*, the Romanian *Senat* and the Slovak *Národná rada*.

⁵⁶ From the Spanish Cortes Generales, the French Assemblée nationale and the Portuguese Assembleia da República.

⁵⁷ COM(2020) 563 final.

⁵⁸ The Danish *Folketing*. It supported a 2030 target of a reduction of ‘at least 55%’, the level chosen in the amended proposal.

⁵⁹ The Polish *Senat*.

⁶⁰ The Slovak *Národná rada*.

⁶¹ The Austrian *Bundesrat*.

⁶² The French Assemblée nationale.

In its replies, the Commission explained that it would use the trajectory as a tool to assess progress towards achieving the climate-neutrality objective and to assess the effectiveness of existing policies. The starting and end points for this trajectory, as well as the criteria to be considered when setting it, were to be set by the co-legislators, so that the delegation did not include any ‘essential element’ within the meaning of Article 290 TFEU. The Commission also indicated that Article 192(1) TFEU was the correct legal basis, in light of the proposal’s objectives. It recalled that for the legislative procedure, the legal basis of Article 192(2) is an exception to the general case of Article 192(1) and should thus be narrowly interpreted in accordance with the Court’s case law.

The Commission also clarified that the development of a power sector largely based on renewable sources was an important part of the European Green Deal, but that the proposal, by not setting a specific pathway to achieve the climate-neutrality objective, fully respected Member States’ rights to determine their own energy mix. It emphasised the strong support that EU climate targets would receive through the future long-term EU budget, temporarily boosted by the new recovery instrument, ‘NextGenerationEU’. It also underlined that the Just Transition Mechanism would provide targeted support for the regions and sectors most affected by the transition to the green economy, so that the transition could happen fairly and inclusively, leaving nobody out.

Two other reasoned opinions, from the Danish *Folketing* and the Swedish *Riksdag*, concerned the proposal for a Directive on adequate **minimum wages** in the European Union adopted on 28 October 2020 by the Commission⁶⁴. Both the *Folketing* and the *Riksdag* considered that the proposal overstepped EU competences in this area and that wage formation measures were best regulated at national level. In their view, the objective of the proposal, to ensure that workers have access to minimum wages enabling them to have a reasonable standard of living wherever they work in the EU, could sufficiently be achieved at national level. The *Folketing* considered that the proposal did not respect social partners’ contractual freedom, while better results in terms of higher wages or fewer low-paid workers were achieved where national authorities are not involved in determining the criteria for collective bargaining agreements and in enforcing them. The *Riksdag* was of the opinion that there was no clear cross-border dimension, as wage formation conditions and systems differed considerably from one country to another and that EU action in this area had no added value.

The Czech *Senát* did not send a reasoned opinion, but it did share the *Folketing*’s and the *Riksdag*’s concerns about the EU competences and questioned the proportionality of the proposal, considering that a Council recommendation would be more appropriate than a directive.

The Commission replied that the proposal aimed to promote collective wage bargaining in all Member States, without calling into question the specific characteristics of national systems and traditions. It fully respected national competencies and the autonomy of social partners, without seeking to harmonise the level of minimum wages across the EU or to establish a uniform mechanism for setting minimum wages in all Member States. It therefore respected the

⁶³ From the Romanian *Senat*.

⁶⁴ COM (2020) 682 final. The Commission received a third reasoned opinion on this proposal in January 2021, from the Maltese *Kamra tad-Deputati*. In 2020, subsidiarity concerns were also raised by two regional Parliaments, from Bavaria (Germany) and Upper Austria (Austria). For additional information on the impact assessment of this proposal, see Section 2.1 above.

limitations set out in its legal basis, Article 153 TFEU. The Commission also explained that a directive was more effective than a recommendation, as it afforded certainty about the binding nature of requirements to be applied by Member States while leaving room for them to decide on the forms and methods of implementation, including entrusting social partners, at their joint request, with this implementation.

The **four other reasoned opinions** concerned the amended proposal for a Decision on the system of own resources of the European Union, adopted on 28 May 2020 by the Commission, (reasoned opinion sent by the Swedish *Riksdag*), the proposal for a Regulation establishing the Just Transition Fund, adopted on 14 January 2020 by the Commission (reasoned opinion sent by the Czech *Poslanecká sněmovna*), the amended proposal for a recast of the Regulation on the implementation of the Single European Sky, adopted on 22 September 2020 by the Commission (reasoned opinion sent by the Maltese *Kamra tad-Deputati*) and the Commission's New Pact on migration and asylum, adopted on 23 September 2020 by the Commission (reasoned opinion sent by the Hungarian *Országgyűlés*).

On **own resources**⁶⁵, the *Riksdag* considered that, while the European Union's economic measures in response to the COVID-19 crisis should be temporary, well targeted and proportional, the Commission proposal entailed significant borrowing on the markets to increase EU programmes without making it clear whether these funds would be used primarily to mitigate the impact of the COVID-19 crisis. For the *Riksdag* therefore, the measures were far too extensive to achieve the objectives of the proposal, and the Commission had failed to give a clear justification as to why this borrowing should be done at EU rather than national level.

The Commission replied that the 'NextGenerationEU' recovery plan was a one-off emergency instrument put in place temporarily and used exclusively for crisis response and recovery measures. Moreover, given the nature of the crisis, it is appropriate to use Article 122 TFEU, which provides for the possibility of measures appropriate to the economic situation and decided on in a spirit of solidarity between Member States. The objectives pursued by the Commission's recovery plan could not be sufficiently achieved by the Member States individually because of the scale of the necessary measures. The Commission added that a large part of the extraordinary support had to be provided through grants to Member States, as loans alone would not allow highly indebted countries to implement the reforms and make the investments absolutely necessary to ensure a rapid EU-wide recovery and a more resilient economy.

On the **Just Transition Fund**⁶⁶, the *Poslanecká sněmovna* considered that requiring Member States to prepare thorough territorial just transformation plans, detailing planned support for large companies, was micromanagement and interfered with their competences in shared management. Moreover, requirements for justifying investments, such as 'preserving a significant number of jobs' or a 'substantial reduction in greenhouse gas emissions', were not clearly defined.

The Commission replied that requiring Member States to give details of plans that enable it to verify that the applicable conditions to be eligible for support were met was not new, having been a feature of previous programming frameworks, and did respect the subsidiarity principle. Member States could decide to support productive investments in businesses other than small

⁶⁵ COM (2020) 445 final. For an overview of the 'NextGenerationEU' recovery plan and the opinions it triggered, see Section 4 below.

⁶⁶ COM (2020) 22 final.

and medium-sized enterprises if the proposed investments fulfilled certain conditions, in particular job creation. Fulfilment of the requirements to substantially reduce greenhouse gases emissions and preserve a significant number of jobs also had to be assessed on a case-by-case basis, given the high number of benchmarks applicable in the EU emissions trading system and the need to take into account the specific situation of the regional labour market and the relative importance of the industry concerned.

On the **Single European Sky**⁶⁷, the *Kamra tad-Deputati* disagreed with the extension of the scope of responsibilities of the Commission and the European Union Aviation Safety Agency (EASA). Noting that air traffic services at Malta Airport were fully government-controlled, it considered that structural changes such as allowing the EASA, acting as a performance review body, to impose corrective measures, such as delegating these services to another provider, would go against national security and defence policies⁶⁸. In its view, less intrusive instruments, respecting the specific territorial characteristics of each Member State, should be chosen to accelerate the implementation of the Single European Sky.

In its reply, the Commission underlined that European air traffic functions as a network. As a result, the objectives of the Single European Sky can only be achieved by EU action, governing the position, conduct and cooperation of a variety of stakeholders in all Member States, including European airspace users, air navigation service providers, and airports. It clarified that the exclusive provision of air traffic services upon designation by a Member State already includes, under the current performance scheme, a regulation of the economic, safety and environmental performance of designated providers. For this, an advisory body supports the Commission, and the tasks proposed to be given to the EASA do not involve political discretion. The Commission also pointed out that, to ensure that performance targets and plans were effectively binding, the performance review body had to be able to impose corrective measures when plans were not implemented or targets not reached.

On the **Pact on migration and asylum**⁶⁹, the *Országgyűlés*⁷⁰ questioned the legal basis of four of the proposals⁷¹ and the human rights monitoring mechanism provided for by the fifth⁷². It warned that the proposals, if adopted, would impose obligations on Member States without sufficiently taking into account specific national characteristics and decision-making powers. The *Országgyűlés* doubted the overall necessity of these obligations and feared that the proposed provisions would render impracticable national border procedures contributing to migration management, such as transit zones. It also questioned the proportionality of the package, as it would impose disproportionate obligations on Member States and would radically change the EU's asylum system.

In its reply, the Commission justified the legal basis for its proposals. It explained that EU action was required to prevent a disproportionate burden of migratory pressure from falling on an individual Member State and that the proposal on asylum and migration management was very flexible, as Member States could choose how to contribute. It underlined that the proposed monitoring mechanism was not a complaint mechanism but an inbuilt control mechanism

⁶⁷ COM (2020) 579 final.

⁶⁸ There is only one airport in Malta.

⁶⁹ COM(2020) 610, 611, 612, 613 and 614 final.

⁷⁰ The Commission received two other reasoned opinions on these proposals in January 2021, from the Italian *Senato della Repubblica* and the Slovakian *Národná rada*.

⁷¹ COM(2020) 610, 611, 613 and 614 final.

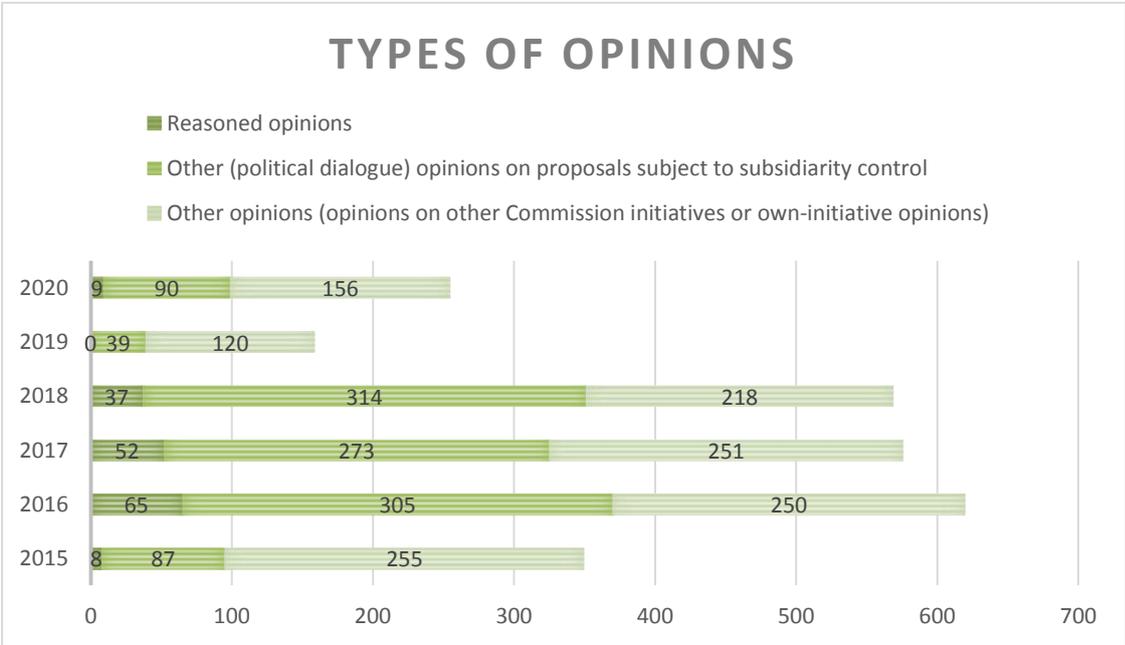
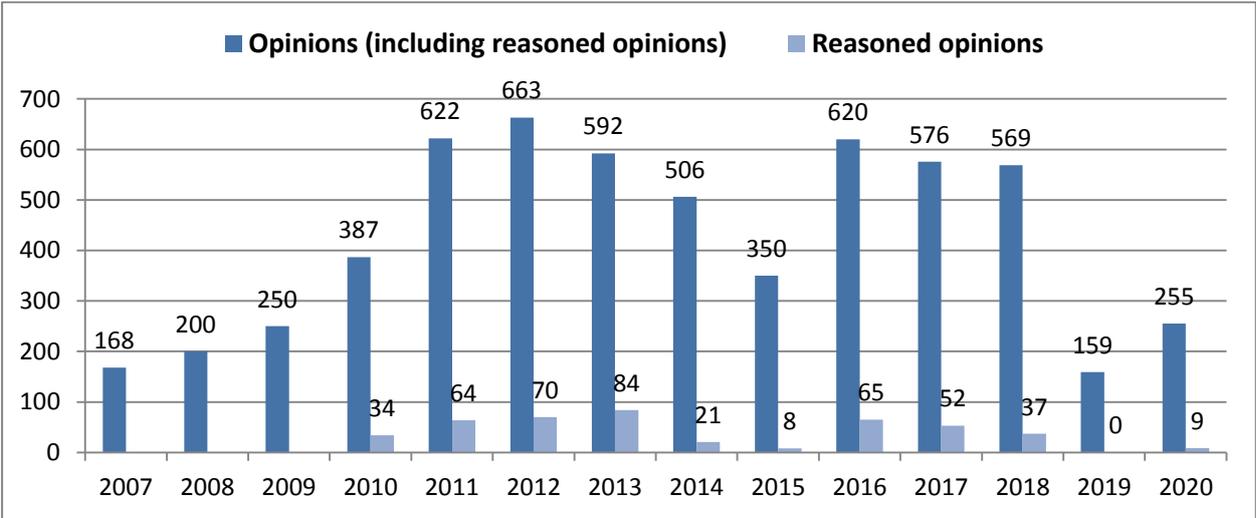
⁷² COM(2020) 612 final.

designed to support national authorities. Member States could choose to entrust monitoring to already existing independent monitoring bodies. It also stressed that the current legal framework limited the use of the EU border procedure to a number of well-defined cases. This procedure could therefore not be considered as the general asylum procedure in a Member State.

4. POLITICAL DIALOGUE WITH NATIONAL PARLIAMENTS

General observations

In 2020, national Parliaments sent 255 opinions to the Commission. This is more than in 2019 (159), but fewer than in previous years (576 in 2017 and 569 in 2018).

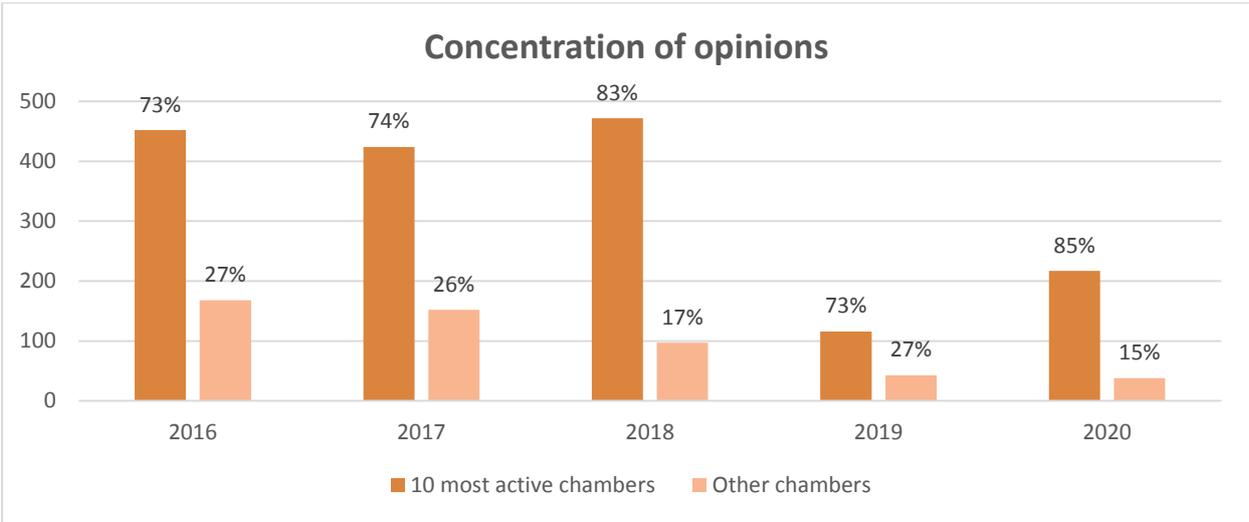


Of these 255 opinions, 99 (39%), including the 9 reasoned opinions (3%), concerned Commission legislative proposals subject to the subsidiarity control mechanism⁷³. The remaining 156 opinions (61%) concerned non-legislative initiatives, such as communications, or were own-initiative opinions not directly related to a Commission initiative. This is between the proportion of 2019, when most opinions were not about legislative proposals, and that of previous years, when the majority of opinions concerned initiatives subject to subsidiarity control⁷⁴.

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 217 opinions. This is 85% of the total, the highest concentration in recent years (2019: 73%; 2018: 83%; 2017: 74%; 2016: 73 %). By contrast, 12 chambers⁷⁵ (17 in 2019, 10 in 2018) did not issue any opinions.

The 10 national Parliaments or chambers that sent the highest number of opinions in 2020 were the Portuguese *Assembleia da República* (40 opinions), the Spanish *Cortes Generales* (28 opinions), the Romanian *Senat* (28 opinions), the Czech *Senát* (22 opinions), the Romanian *Camera Deputaţilor* (22 opinions), the German *Bundesrat* (21 opinions), the French *Sénat* (19 opinions), the Czech *Poslanecká sněmovna* (17 opinions), the Italian *Camera dei Deputati* (10 opinions), and the Swedish *Riksdag* (10 opinions), also among the most active chambers in previous years. Annex 2 details the number of opinions each chamber sent.



Main topics of the opinions in the political dialogue

In 2020, the EU response to the COVID-19 crisis drew most attention from national Parliaments, triggering 66 opinions, 26% of all opinions received. Of these, 44 directly concerned the

⁷³ For a presentation of 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

⁷⁴ 2018: 62% of opinions concerned initiatives subject to subsidiarity control, 38% others; 2017: 56% concerned initiatives subject to subsidiarity control, 44% others; 2016: 60% concerned initiatives subject to subsidiarity control, 40% others. See also the chart ‘Types of opinions’ in Section 3.

⁷⁵ Belgian Chambre des représentants/Kamer van volksvertegenwoordigers, Bulgarian Narodno Sabranie, Cypriot Vouli ton Antiprosopon, Estonian Riigikogu, Finnish Eduskunta, Irish Houses of the Oireachtas (Dáil and Seanad Éireann), Latvian Saeima, Luxembourg Chambre des Députés, Dutch Tweede Kamer, Slovenian Državni svet and Državni zbor.

recovery plan ‘NextGenerationEU’ or part of the plan, including the revised proposals for the 2021-2027 multiannual financial framework and for the Council Decision on own resources. A further 11 opinions concerned initiatives taken during the early phase of the crisis, before the adoption of ‘NextGenerationEU’, 7 concerned later initiatives and 4 were national Parliaments’ own-initiative opinions on specific aspects of the crisis.

The single Commission proposal that prompted the largest number of opinions was the proposal for a European Climate Law. It prompted 12 opinions, including 3 reasoned opinions (on this, see Section 3 above).

Other issues that drew the most attention from national Parliaments were artificial intelligence, the Conference on the Future of Europe and the European Green Deal.

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

- *Response to the COVID-19 crisis*

The Commission received 11 opinions from 6 parliamentary chambers⁷⁶ on initiatives it had taken during the early phase of the pandemic, up to mid-May 2020⁷⁷. These opinions were generally supportive. Some chambers made suggestions such as modernising healthcare infrastructure in Member States, borrowing money at EU rather than national level, or launching a powerful investment programme in the Western Balkans region. In its replies, the Commission welcomed these suggestions and noted that its further action incorporated most of them.

On 27 May, the Commission put forward a major recovery plan to repair the economic and social damage caused by the pandemic and to the EU on a path of sustainable and resilient recovery by harnessing the full potential of its budget. The plan is based on a new instrument, ‘NextGenerationEU’, completed by a targeted revision of the 2021-2027 multiannual financial framework and an amendment of the Decision on own resources allowing the EU to raise EUR 750 billion on financial markets. The whole package comprised two political communications, ‘Europe’s moment: repair and prepare for the Next Generation’ and ‘The EU budget powering the recovery plan for Europe’⁷⁸, the revision of the Commission’s 2020 annual work programme⁷⁹, adopted on 27 May, and 21 legislative proposals⁸⁰, adopted the following days.

The Commission received 44 opinions from 13 chambers⁸¹ on various parts of the package. Most of these opinions were supportive of the Commission’s initiatives. There were two exceptions,

⁷⁶ Five from the Romanian *Senat*, 3 from the Portuguese *Assembleia da República*, 1 each from the Spanish *Cortes Generales*, the Italian *Camera dei Deputati* and the Romanian *Camera Deputaţilor*.

⁷⁷ Communications ‘Coordinated economic response to the COVID-19 outbreak’ (COM(2020) 112) and ‘Using every available euro in every way possible to protect lives and livelihoods’ (COM(2020) 143), joint communication on the global EU response to COVID-19 (JOIN(2020) 11), interpretative communication on the application of accounting and prudential framework to facilitate EU bank lending (COM(2020) 169) and five legislative proposals (COM(2020) 139, 163, 175, 186 and 219).

⁷⁸ COM(2020) 456 final and 442 final respectively.

⁷⁹ COM(2020) 440 final, adjusting the initial programme COM(2020) 37 final.

⁸⁰ COM(2020) 220, 223, 403, 404, 405, 407, 408, 409, 441, 443, 444, 445, 446, 447, 450, 451, 452, 453, 459, 460 and 461 final.

⁸¹ 17 from the Portuguese *Assembleia da República*, 11 from the Spanish *Cortes Generales*, 3 from the Romanian *Senat*, 2 from the German *Bundesrat*, the Czech *Poslanecká sněmovna* and the Czech *Senát* and 1 each from the Hungarian *Országgyűlés*, the French *Assemblée nationale*, the Croatian *Hrvatski Sabor*, the Italian *Camera dei Deputati*, the Lithuanian *Seimas*, the Maltese *Kamra tad-Deputati* and the Swedish *Riksdag*. Moreover, outside the political dialogue, the Polish *Sejm* and *Senat* each sent a resolution on Council budget negotiations.

the reasoned opinion on the amended proposal for a Decision on the system of own resources of the European Union and an opinion on the proposal for a new Union civil protection mechanism⁸². Some national Parliaments suggested: (i) extending the new Recovery and Resilience Facility's budget commitment period to the whole seven-year programming period; (ii) revising the allocation of funds among Member States to reflect the real impact of the pandemic on their economies and societies; (iii) creating additional new resources fully covering the repayment of 'NextGenerationEU'; (iv) increasing the funds allocated to cohesion, agriculture, migration and border management, or security and defence. Several national Parliaments also expressed clear support for making access to financing conditional on adherence to the principles of the rule of law.

In its replies, the Commission referred to the agreement the European Council reached on 21 July on the 2021-2027 multiannual financial framework and the recovery package. It underlined the importance of swiftly deploying the recovery support and explained that while commitments for grants and loans should be made until the end of 2023, payments could continue until the end of 2026, almost the full duration of the multiannual financial framework. It stressed that the loss of GDP would be widely used in determining the allocation of funds among Member States, and confirmed that in 2021, it would propose a basket of new own resources. The Commission also acknowledged that funding should be well targeted and balanced between different EU priorities to ensure a balanced recovery in the long term, and explained that 'NextGenerationEU' included instruments to increase cohesion support for Member States, additional funds for rural development, and the Just Transition Fund to make economies more resilient and sustainable in the crisis-repair phase. It observed that, in the conclusions of the European Council of 21 July, the funding for migration-related issues, border management, security and defence, although reduced compared to its proposals of 27 May, still represented an increase compared to the previous programming period. It welcomed the support of national Parliaments on the rule-of-law conditionality mechanism. Finally, the Commission emphasised the direct role of most national Parliaments in the approval of the Decision on own resources, after its adoption by the Council, by each Member State in accordance with its constitutional requirements.

The Commission received 7 opinions from 2 national Parliaments⁸³ on legislative proposals taken later in the year to respond to the COVID-19 crisis⁸⁴. These opinions generally supported the aims of the proposals. However, an opinion on the proposal to create an 'EU Recovery Prospectus' to facilitate the recapitalisation of companies affected by the crisis⁸⁵ expressed the fear that the obligation to draw up a prospectus could be an administrative burden making smaller emissions difficult. In its reply, the Commission explained that its proposal introduced exemptions for smaller offers of securities as well as a simplified prospectus.

⁸² On the reasoned opinion from the Swedish *Riksdag* on own resources and the Commission reply, see Section 3 above. The opinion of the German *Bundesrat* on the proposal for a new Union civil protection mechanism, although not a reasoned opinion, considered that the proposal infringed national and regional competences. The Commission replied that the proposed mechanism was based on the EU's supporting competence outlined in Article 196 TFEU and that it would first use national resources, with Member States retaining the primary responsibility for protecting people, the environment and property on their territory against disasters.

⁸³ 4 from the Portuguese *Assembleia da República* and 3 from the Spanish *Cortes Generales*.

⁸⁴ COM(2020) 260, 261, 281, 282 and 283 final.

⁸⁵ COM(2020) 281 final. Opinion from the Portuguese *Assembleia da República*

The Commission also received 4 own-initiative opinions from 2 chambers⁸⁶ on specific aspects of the response to the pandemic. These opinions aimed to: (i) encourage relocating the production of medicines back to the EU; (ii) reinforce the exceptional common agricultural policy measures to address the consequences of the pandemic; (iii) ensure that governments respect the rule of law when adopting exceptional measures, such as the use of tracing apps; and (iv) temporarily allow airlines to compensate passengers with credit/voucher instead of an immediate refund for cancelled flights.

- *Artificial intelligence*

On 19 February, the Commission adopted a White Paper on artificial intelligence – A European approach to excellence and trust⁸⁷. It presented policy options to enable trustworthy and secure development of artificial intelligence in Europe, fully respecting the values and rights of EU citizens. It consisted of two pillars: a policy framework to mobilise resources along the entire value chain in order to accelerate the development of artificial intelligence (‘ecosystem of excellence’) and the key components of a future regulatory framework (‘ecosystem of trust’).

The Commission received 6 opinions from 6 chambers⁸⁸ on this White Paper. Two strands of opinions could be identified: one group of chambers focused on the need to create a regulatory framework that would establish legal certainty for developers and users and promote innovation in Europe, while the other group warned that any premature regulatory efforts could hamper innovation. One chamber suggested adding a third pillar in the form of an ‘ecosystem of agility’ to ensure that there was the necessary freedom and scope for experimentation. Some chambers also requested an appropriate geographical balance in the development of centres of excellence in the EU, highlighted the challenges of skills shortage and reskilling, or emphasised the need to develop new information security procedures and protect individuals’ rights.

In its replies, the Commission confirmed its objective of establishing a dedicated legal framework for artificial intelligence applications, using a risk-based approach. It clarified that its aim was not to regulate the technology as such or put it under suspicion, but to regulate specific applications or uses that might put fundamental rights and safety at great risk, agreeing on the need to define high-risk artificial intelligence applications. It also agreed that rules should allow for flexible adaptations in view of future developments and technologies. It confirmed the creation of about 200 Digital Innovation Hubs across Europe in order to stimulate the broad uptake of digital technologies, including by micro-enterprises and start-ups, which should contribute to convergence among regions by sharing best practice and knowledge common to all hubs. The Commission also agreed on the need to develop artificial intelligence education at all levels and lifelong learning on artificial intelligence.

- *Conference on the Future of Europe*

On 22 January, the Commission adopted a communication on ‘Shaping the Conference on the Future of Europe’⁸⁹, presenting its views on the conference. It considered that the conference should be an open discussion focusing on what matters to citizens, and be accessible to citizens from all walks of life and all corners of the Union. It suggested two parallel strands of

⁸⁶ 3 from the French *Sénat* and 1 from the French *Assemblée nationale*.

⁸⁷ COM(2020) 65 final.

⁸⁸ From the Czech *Poslanecká sněmovna* and *Senát*, the German *Bundestag* and *Bundesrat*, the Romanian *Camera Deputaţilor* and the Swedish *Riksdag*.

⁸⁹ COM(2020) 27 final.

discussion, one focusing on policy, revolving around the EU's headline ambitions, and the other on democratic processes, in which the Commission's role should be that of a facilitator and of a honest broker. It also considered that the concept, structure, scope and timing of the conference should be determined by a joint declaration of the European Parliament, the Council and the Commission and that national and regional Parliaments and other actors should have an important role to play in the conference and be encouraged to organise conference-related events.

The Commission received 5 opinions from 5 chambers⁹⁰ on this communication. Another chamber⁹¹ sent an own-initiative opinion (with no reference to the communication) and another one⁹² a letter on the same topic. All chambers requested the same level of representation and the same rights for national Parliaments as for the European Parliament in the plenary of the conference, and requested the participation of national Parliaments in the conference's governing structures, as they believed that their direct involvement was essential for creating ownership of the conference's organisation and outcome. This view was reiterated in COSAC meetings, in three letters from COSAC to the EU institutions and in the COSAC's 34th biannual report⁹³.

On the scope and possible outcome of the Conference, some chambers were opposed to any discussions on Treaty changes, while others were open to such discussions. One chamber asked for clarification of the legal character of the Conference and its capacity to propose such changes. Suggested topics for discussion were the rule of law and fundamental principles, rights and values, the transparency of the EU's decision-making process, the role of national Parliaments in this process, and the main topics of the European Council's strategic agenda. National Parliaments also stressed the importance of feedback from the Conference and of following up on the outcome. They made various suggestions on how to involve citizens, such as holding events outside capitals, tailoring the public interface to the skills and expectations of young people, and paying sufficient attention to gender equality.

In its replies, the Commission welcomed the national Parliaments' strong engagement with the preparation of the Conference and emphasised that they could make a key contribution to the Conference's success by sharing their experience, organising events and ensuring that it reaches as many citizens as possible. It agreed that the EU's headline ambitions, as set out in its political priorities and the European Council's strategic agenda, provided a broad framework. In addition citizens are allowed to bring up whatever they considered important. It confirmed that it was also ready to play its role in exploring how the EU could improve its democratic processes and increase its legitimacy.

- *European Green Deal*

On 11 December 2019, the Commission adopted a communication on 'the European Green Deal'⁹⁴, setting out a new growth strategy to turn the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. This

⁹⁰ From the German *Bundesrat*, the Lithuanian *Seimas*, the Romanian *Camera Deputaţilor* and *Senat* and the Swedish *Riksdag*.

⁹¹ The Polish *Sejm*.

⁹² The Danish *Folketing*.

⁹³ For COSAC activities, see Section 5 below.

⁹⁴ COM(2019) 640 final

communication contained an initial roadmap of the key policies and measures needed to achieve these objectives.

The Commission received 5 opinions from 5 chambers⁹⁵ on this communication. Some of them expressed concerns over the impact of the transition on Member States' economies, asking that the transition be fair, preserve technological neutrality and allow each Member State to choose its own path, or that the Commission revise the EU target of achieving carbon neutrality by 2050 and the way to reach it. Others welcomed the priority the Commission gave to environmental and climate issues and advocated setting ambitious goals. National Parliaments also stressed that the transition to a sustainable economy could be achieved only with public support, meaning that social hardships in the transition had to be appropriately mitigated, and that incentives should be established in order to encourage private players to participate financially in implementing the European Green Deal.

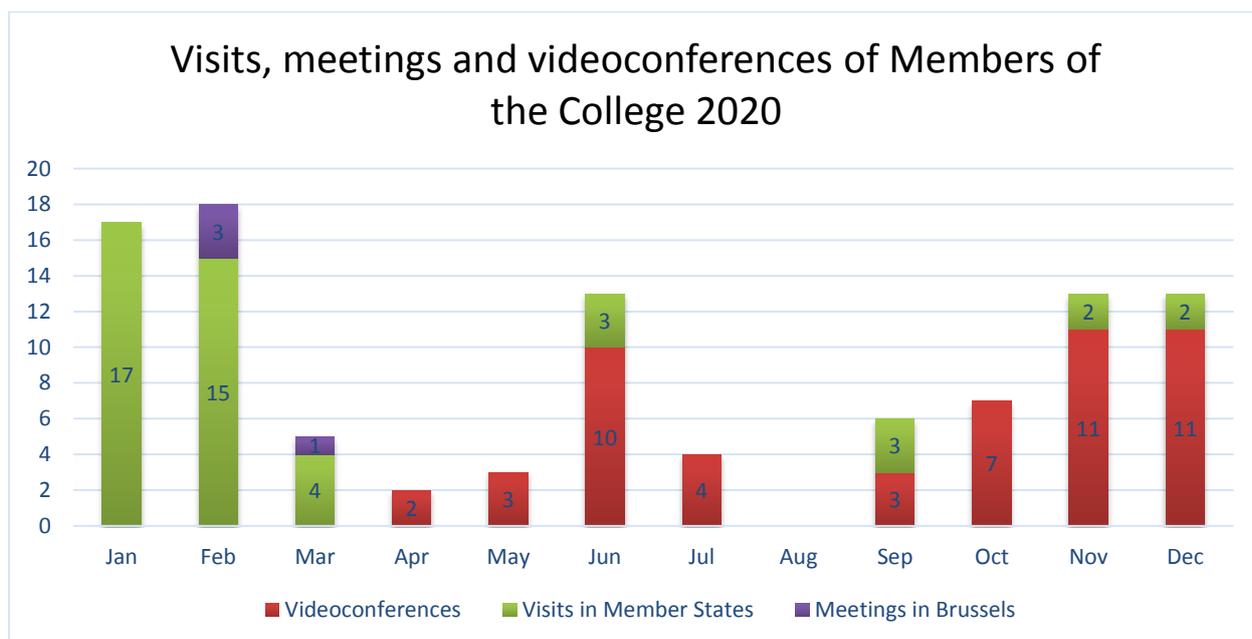
In its replies, the Commission underlined its commitment to implement the United Nations' 2030 Agenda and Sustainable Development Goals, an integral part of its agenda. It explained that, given the unprecedented temporary investments needed to overcome the negative impact of the COVID-19 crisis, today's political choices would determine the next generations' future. This is why it does not want to invest in an outdated, fossil-fuel-based economy, but build a green, digital, inclusive, and resilient economy, fit for the 21st century. It agreed that to succeed in doing so, the transition towards a climate-neutral future had to be just, leaving no one behind, and referred to the Just Transition Mechanism it had proposed to provide support to all Member States, focusing on the most carbon-intensive regions. It also stressed that it was fully respecting the right of Member States to choose their energy mix, and that the proposals it had presented or would present to achieve the European Green Deal objectives were based on evidence and thoroughgoing impact assessments.

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

Commission visits to and meetings with national Parliaments

In 2020, Members of the Commission had 101 visits to national Parliaments or (virtual) meetings with national Parliaments' delegations. This was more than in 2019 (55), despite the disruption caused by COVID-19. Following President von der Leyen's request to each Member of the Commission to visit all Member States within the first 2 years of their mandate and meet regularly with national Parliaments, a large number of visits to national Parliaments took place in January (17) and February (15), but this trend was interrupted by the outbreak of the pandemic. From April to the end of the year, most meetings between national Parliaments and Members of the Commission took place by videoconference.

⁹⁵ From the Czech *Poslanecká sněmovna* and *Senát*, the German *Bundesrat*, the Dutch *Eerste Kamer* and the Swedish *Riksdag*



In 2020, the EU’s Chief Brexit Negotiator, Michel Barnier, also met with 12 national Parliaments. Commission officials, mostly at senior level, attended over 20 meetings of committees of national Parliaments to discuss legislative proposals on a more technical level. Commission officials also gave 23 presentations (17 of them by videoconference) to representatives of national Parliaments in Brussels on various subjects, such as ‘NextGenerationEU’, the Conference on the Future of Europe, the European Green Deal, the new pact on migration and asylum or the annual report on the rule of law. The presentations by videoconference made it possible to broaden the audience to include national Parliament officials in the capitals, thereby increasing the number of participants and improving the Commission’s outreach to national Parliaments.

Commission representations in Member States remained in frequent contact with national Parliaments, in particular on the European Semester process and on other economic issues. In 2020, they organised 254 visits or events that involved national Parliaments.

Inter-parliamentary meetings and conferences

Despite the pandemic, inter-parliamentary cooperation further developed in 2020. Many inter-parliamentary meetings and conferences⁹⁶ took place, most of them by videoconference and generally with the participation of Members of the Commission, including:

- the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC⁹⁷);

⁹⁶ 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>

⁹⁷ COSAC is the only inter-parliamentary forum enshrined in the Treaties, in Protocol No 1 on the role of national Parliaments in the European Union. It usually meets twice (one Chairpersons meeting, one plenary) in the Member State that holds the rotating presidency of the Council of the European Union. The Commission has observer status in the COSAC. For more information on 2020 COSAC meetings, see:

- the European Parliamentary Week⁹⁸;
- the inter-parliamentary Conference on Stability, Economic Coordination and Governance⁹⁹;
- the inter-parliamentary conferences for the Common Foreign and Security Policy and the Common Security and Defence Policy¹⁰⁰;
- the Europol Joint Parliamentary Scrutiny Group¹⁰¹;
- the first inter-parliamentary committee meeting on the evaluation of Eurojust activities¹⁰²;
- the high-level inter-parliamentary Conference on Migration and Asylum¹⁰³;
- the inter-parliamentary conferences on ‘the European Green Deal and CAP’ and ‘for a social and fair Europe’¹⁰⁴.

The LXIV COSAC plenary meeting, held by videoconference on 30 November and 1 December 2020, was attended by Commission President von der Leyen. It was the first time since 2013 that a Commission President participated in the COSAC. Discussion topics of the COSAC plenary were the review of the German Presidency, lessons learnt from the COVID-19 crisis on cooperation in pandemics and health care, the future of Europe, transatlantic relations and the partnership with Africa. President von der Leyen gave a keynote speech on the common European response to the pandemic, the multiannual financial framework, ‘NextGenerationEU’ and the Conference on the future of Europe. She urged taking the crisis as an opportunity not only to repair damage, but also to take a leap forward in order to build a more sustainable, more resilient and digital Europe. She stressed the need for better preparedness and European cooperation in similar situations in the future and emphasised the important role of national Parliaments in transforming EU funds into projects that will create jobs and growth.

<http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?type=082dbcc564afa0210164b2da9f5102f8>

⁹⁸ The European Parliamentary Week was held at the European Parliament on 18-19 February 2020. Executive Vice-President Dombrovskis, Vice-President Šuica and Commissioners Gentiloni and Schmit participated. More information:

<http://www.europarl.europa.eu/relnatparl/en/high-level-conferences/european-parliamentary-week.html>

⁹⁹ This conference, held by videoconference on 12 October, was attended by Executive Vice-President Dombrovskis and Commissioner Gentiloni. In the first half of the year, the conference was, as in previous years, part of the European Parliamentary Week. More information:

<https://secure.ipex.eu/IPEXL-WEB/conference/getconference.do?id=8a8629a871fd920b017293cdfa846bc7>

¹⁰⁰ Two conferences were held, one in Zagreb on 3-4 March and one by videoconference on 4 September. High Representative/Vice-President Borrell Fontelles attended the second one. More information:

<https://secure.ipex.eu/IPEXL-WEB/conference/getconference.do?type=082dbcc5420d8f48014247cca6f04248>

¹⁰¹ This conference, held by videoconference on 28-29 September, was attended by Commissioner Johansson. Another one had been scheduled for the first semester of 2020 but was cancelled. More information:

<https://secure.ipex.eu/IPEXL-WEB/conference/getconference.do?id=8a8629a872e48b7c0173477b67754478>

¹⁰² This meeting was held by videoconference on 1 December and was attended by Commissioner Reynders. More information:

<https://www.europarl.europa.eu/relnatparl/en/high-level-conferences/jpsg-on-europol-and-eurojust-icm.html>

¹⁰³ This conference, held by videoconference on 19 November, was attended by Commission President von der Leyen, Vice-President Schinas and Commissioners Johansson and Urpilainen. More information:

<https://www.europarl.europa.eu/relnatparl/en/interparliamentary-meetings/other-meetings.html>

¹⁰⁴ These conferences were held by videoconference, respectively on 5 October (with Executive Vice-President Timmermans and Commissioner Wojciechowski) and 9 November (with Commissioners Reynders and Schmit). More information:

https://www.parleu2020.de/en/Events#tiles_events_container_691278

The two regular COSAC Chairpersons meetings were held, respectively, in Zagreb on 20-21 January 2020 and by videoconference on 14 September 2020. The January meeting, attended by Vice-President Šuica, focused on the priorities of the Croatian Presidency and on the Conference on the Future of Europe. The September meeting, attended by Executive Vice-President Timmermans, focused on the priorities of the German Presidency, the consequences of the COVID-19 pandemic and the lessons learnt so far.

The pandemic caused the cancellation of scheduled physical meetings, such as the LXIII COSAC plenary and the Conference of the Speakers of European Union Parliaments¹⁰⁵. However, videoconferencing allowed organising several extraordinary Chairpersons meetings. A first meeting took place on 16 June 2020 to replace the cancelled plenary meeting. It was attended by Vice-President Šešćovič and focused on the common European response to the pandemic and its repercussions on the 2021-2027 multiannual financial framework, as well as the Conference on the Future of Europe. Two other extraordinary Chairpersons meetings focused on topical issues: on 29 October 2020 with the participation of Vice-President Jourova and Commissioner Reynders, on the Commission's 2020 Rule of Law Report, and on 23 November 2020, with the participation of Executive Vice-President Vestager, on dealing with the consequences of the pandemic and lessons learnt from a competition perspective. Two meetings between the Chairpersons and Mr Barnier were also organised on 26 June 2020 and 17 September 2020, on EU-UK relations.

Following the extraordinary Chairpersons meeting of 16 June 2020 and the plenary meeting of 30 November and 1 December 2020, 32 delegates from national Parliaments co-signed letters to the Presidents of the European Parliament, the European Council, the Council and the Commission. The June letter welcomed a common European response to the COVID-19 crisis, emphasised the importance of a timely adoption of the multiannual financial framework and requested an adequate representation of national Parliaments at the Conference on the Future of Europe. The December letter reiterated the latter request, clarifying that ideally, national Parliaments should be involved on an equal footing with the European Parliament in organising the conference, in its steering committee and in drawing up conclusions. The letter also made the case for a decentralised approach with the organisation of several events in the Member States and their regions.

Ratification of the Decision on own resources

The Decision on the system of own resources of the Union was adopted by the Council on 14 December¹⁰⁶. Before entering into force, it has to be approved by all Member States in accordance with their respective constitutional requirements. In most Member States, this involves a parliamentary ratification. One national Parliament, the Croatian *Hrvatski Sabor*, had already completed this ratification in 2020, on 18 December¹⁰⁷.

¹⁰⁵ The Conference of the Speakers of European Union Parliaments is organised annually in the Member State that held the rotating presidency of the Council of the European Union during the second half of the preceding year.

¹⁰⁶ Council Decision (EU,Euratom) 2020/2053 – OJ L424, 15.12.2020.

¹⁰⁷ Cyprus was the second Member State to ratify the decision, on 22 December 2020, without parliamentary involvement. All remaining Member States ratified the decision in 2021. It entered into force on 1 June 2021.

6. THE ROLE OF REGIONAL PARLIAMENTS

Regional Parliaments indirectly contribute to the Commission's relations with national Parliaments. Under Protocol No 2 to the Treaties, when carrying out the subsidiarity check of draft EU legislative acts with a view to issuing reasoned opinions, it will be for each national Parliament to consult, where appropriate, regional Parliaments that have legislative powers¹⁰⁸.

Members of regional Parliaments are also represented in the Committee of the Regions, which does monitoring work through the Subsidiarity Monitoring Network and its online platform designed to support the participation of regional Parliaments with legislative powers in the early warning mechanism on subsidiarity (REGPEX)¹⁰⁹. They also participate, through the RegHub network, in the Commission's 'Fit for Future' platform, which is part of its better regulation efforts¹¹⁰.

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 Parliaments¹¹¹ submitted resolutions directly to the Commission on various issues, such as the Conference of the Future of Europe, the adoption of the EU budget and the Council Decision on the EU's own resources, the German Presidency, the European Green Deal and climate protection, green and social economy, the action plan on circular economy, the 'Farm to Fork' strategy, the proposal on adequate minimum wages, the EU civil protection mechanism, regional policy in the Azores and in Poland, geoblocking, the protection of refugees and migrants, the prevention of money laundering and terrorist financing, the situation in Nagorno-Karabakh, and a call for the immediate liberation of an Erasmus Mundus student arrested in Egypt. One regional Parliament also submitted replies to several public consultations launched by the Commission¹¹², while another one submitted an opinion through a national Parliament¹¹³. Members of the Commission also had meetings with some regional Parliaments¹¹⁴.

7. CONCLUSION

The trend seen in 2019 that the majority of opinions from national Parliaments concerned non-legislative Commission initiatives or were own-initiative opinions was sustained in 2020. This shows the interest of some national Parliaments in being actors in EU policymaking not only in

¹⁰⁸ Article 6, first paragraph, of Protocol No.2 on the application of the principles of subsidiarity and proportionality.

¹⁰⁹ <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.

¹¹⁰ For more details on 'Fit for Future' and 'Reg Hub', see Sections 2.1 and 2.4

¹¹¹ The regional Parliaments of Flanders, Wallonia and the Belgian German-speaking Community (Belgium), of Bavaria, Brandenburg and Thuringia (Germany), of the Balearic Islands and the Basque Country (Spain), of the Azores (Portugal), of Upper Austria (Austria) and of Mazovia and Subcarpathia (Poland).

¹¹² The regional Parliament of Bavaria, on the 'renovation wave', adapting to climate change, the digital single market and the digital services act, rural development, the evaluation of the agricultural promotion policy, European fisheries statistics, the White Paper 'Roadmap to a Single European Transport Area' and legal migration.

¹¹³ The Parliament of Flanders on relations with Turkey. The Commission registered it as an opinion of the Belgian *Sénat/Senaat* and replied to the latter.

¹¹⁴ Vice-President Šuica met the Parliament of the Belgian German-speaking community and Commissioner Hogan met the Parliament of Wallonia.

the subsidiarity control exercise, but also earlier on and at other stages of the process, by providing forward-looking political input.

More than a quarter of national Parliaments' opinions sent to the Commission in 2020 concerned the response to the COVID-19 crisis, demonstrating national Parliaments' strong engagement in times of crisis.

Despite the disruption caused by COVID-19, Members of the Commission had more meetings with national Parliaments than in 2019. President von der Leyen and Members of the Commission actively attended many inter-parliamentary meetings, including the LXIV COSAC plenary. National Parliaments extensively used videoconferences, which offered a more wide-reaching way for the Commission to present its initiatives. The use of digital tools proved efficient in strengthening and intensifying the exchanges between the Commission and national Parliaments. This political exchange could continue to benefit from these tools even after the pandemic.

In 2020, the Commission helped national Parliaments to exercise subsidiarity control in two ways. First, it excluded the Christmas/New Year period when calculating the eight-week period for submitting reasoned opinions. Second, it showed flexibility when reasoned opinions were received after the expiration of the scrutiny period, to cater for the possible practical difficulties national Parliaments might have encountered due to the COVID-19 crisis.

The Commission also tightened its policy links with local and regional authorities through a new 'Fit for Future' platform that is working on future-proof legislation.