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REPORT FROM THE COMMISSION

ANNUAL REPORT 2022

**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 30th 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 the Treaty on the Functioning of the European Union. Since 2018 the report has also covered the Commission's relations with national Parliaments, which play a major role in applying these principles.

In 2022, there was a return to normality after the removal of restrictions introduced in March 2020 due to the COVID-19 pandemic. This also applied to relations with national Parliaments, where the majority of interactions shifted from virtual back to physical.

Russia's war of aggression against Ukraine made its impact felt – as everywhere – in relations with national Parliaments and in interparliamentary cooperation. The war was a topic that national Parliaments touched upon in various opinions and in all COSAC¹ meetings. However, national Parliaments also remained focused on the main Commission priorities, paying particular attention to the green and digital transitions and to democracy issues.

The closing of the Conference on the Future of Europe also placed the spotlight on the role of national Parliaments. Its conclusions included a section on subsidiarity, with a number of proposed measures to help ensure respect for the subsidiarity principle in EU legislation.

National Parliaments also reflected intensively on their role in EU policymaking and on how to improve respect for European values, the rule of law, fundamental rights and democracy. Under the French Presidency, two working groups issued conclusions on these topics.

In 2022, the Commission started putting into practice the new better regulation commitments it had presented the previous year. This included better analysis of and communication on how the principles of subsidiarity and proportionality were taken into account in its proposals.

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

2.1. THE COMMISSION

Better regulation: implementation of the Communication, revised guidelines and toolbox

In 2022, the Commission implemented the revised better regulation guidelines and toolbox adopted in 2021², further strengthening the application of the principles of subsidiarity and proportionality. As announced in the 2021 Better Regulation Communication³, the Commission started to systematically attach a subsidiarity assessment grid to all politically sensitive and important proposals accompanied by an impact assessment. Public consultations now also allow to distinguish local, regional and national authorities more clearly, and reflect their respective input more accurately.

¹ Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.

² See last year's report for additional information, Section 2.1.

³ COM(2021) 219 final.

In addition, the Commission strengthened its territorial impact assessments and introduced rural proofing⁴, so that the needs and specific characteristics of different EU regions and territories are better taken into account. Accordingly, all impact assessments include a more comprehensive screening process to identify significant asymmetric effects of Commission legislative proposals on different EU territories, such as cross-border, rural, insular, mountainous, outermost or sparsely populated areas. This screening methodology shows, in a three-step process⁵, whether there are disproportionate territorial consequences that merit a territorial impact assessment.

Moreover, the Commission also started to fully implement the ‘one in, one out’ approach in 2022, which means that new burdens for businesses and individuals resulting from the Commission’s legislative proposals are being offset by reducing existing burdens in the same policy area. All compliance costs and cost savings are fully and transparently presented in impact assessments. Under the ‘one in, one out’ approach, adjustment costs are compensated as much as possible, while administrative costs are offset in the same policy area as much as possible taking into account the specifics of individual policy areas. The approach has made the EU regulatory framework more proportionate overall, prompted more extensive quantification of costs and benefits and acted as a kind of ‘cost break’. It has thus helped to minimise costs and maximise benefits for people and businesses. The 2022 Annual Burden Survey⁶ transparently presents the positive outcomes that led to an overall reduction in administrative burdens of EUR 7.3 billion in 2022.

‘Fit for Future’ platform input to simplification and burden reduction

In 2022, the ‘Fit for Future’ platform⁷ – a high-level expert group helping the Commission to simplify EU laws and reduce related unnecessary regulatory burdens – adopted 10 opinions⁸ based on its annual work programme. It covered a broad range of topics such as finance and taxation, environment, green and digital transitions, victims’ rights, food waste and biological solutions. Many of the opinions put forward ideas for simplification and burden reduction that could potentially lead to improvements directly at local and regional level. An example is the opinion on governments’ interoperability strategy⁹, which called for an analysis – in relevant impact assessments – of the feasibility of an interoperability governance system. The opinion on

⁴ *Rural proofing* was announced in the Communication on the long-term vision for the EU’s rural areas, COM(2021) 345 final. It means reviewing policies through a rural lens, considering actual and potential, direct and indirect impacts on rural jobs and growth and development prospects, social well-being, and the environmental quality of rural areas and communities. If there are significant adverse effects on these areas and communities, the design and implementation of an EU intervention might need to be adjusted to take account of their specific context.

⁵ Commission departments examine the potential for territorial impacts on specific types of regions/areas with the help of exploratory questions ([Better regulation tool #18](#)). If the answer to any of these questions is ‘yes’, an online territorial impact necessity check ([Better regulation tool #34](#)) is carried out. The necessity check assesses whether a territorial impact assessment is advised. When potential territorial impacts are deemed substantial, a territorial impact assessment provides insights into the likely patterns of impacts across the EU and helps identify drivers and potential adjustment opportunities to ensure the impact of the policy is more evenly spread.

⁶ See https://commission.europa.eu/publications/annual-burden-survey_en.

⁷ The *Fit for Future platform* taps into the expertise and experience of national, regional and local levels of governance and stakeholders. It comprises two groups: the government group (representatives from national, regional and local authorities from all EU countries, and from the Committee of the Regions) and the stakeholder group (experts on better regulation representing business and non-governmental organisations, plus the European Economic and Social Committee). See https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof/fit-future-platform-f4f_en.

⁸ https://commission.europa.eu/publications/adopted-opinions-2022_en

⁹ https://commission.europa.eu/system/files/2022-12/Final%20opinion%202022_SBGR3_10%20Governments%20interoperability%20strategy_rev.pdf

both the revision of the Directive on end-of-life vehicles and the Directive on the type-approval of motor vehicles¹⁰ also has the potential to benefit local and regional levels as it called on the Commission to consider the full digitalisation of the registration system and the installation of a central registration system and/or interoperable systems or ensuring the compatibility and coordination of registration systems across and within Member States. Furthermore, the opinion on interconnectivity between the digital and green transitions¹¹ highlighted the importance of better use of strategic foresight and, among other things, better access to data through improved broadband infrastructure and governance.

The Committee of the Regions' RegHub network¹² contributed its experience on the ground with the implementation of EU policy, which the platform was able to draw on for its opinions. The RegHub network also provided input for the platform's annual work programme by suggesting topics of interest to the local and regional levels¹³. And, in 2022, the network presented the Special Report '21st Century Rules for 21st Century Infrastructure'¹⁴. The report focused on overcoming obstacles to transport, digital and green infrastructure that local and regional administrations encounter in rolling out infrastructure projects. It provided the views of regional and local authorities on hindrances and possible investment solutions, which are key for facilitating the green and digital transitions and achieving the EU objectives of the Green Deal, the Digital Decade, and sustainable and smart mobility.

Impact assessments

The Commission analyses compliance with the principles of subsidiarity and proportionality in all impact assessments prepared for policy and legislative proposals. These assessments are subject to independent quality control by the Regulatory Scrutiny Board¹⁵. The Board scrutinised 70 impact assessments in 2022, compared to 83 in 2021.

In assessing compliance with the subsidiarity and proportionality principles, any cross-border aspects are of particular relevance, an example being the proposal for a Directive on asset recovery and confiscation¹⁶. The impact assessment highlighted that Member States' individual efforts to deal with organised crime are not sufficient to tackle the cross-border nature of organised crime groups. This is because 70% of criminal groups operating in the EU are active in more than three Member States and hide and re-invest property derived from criminal activities across the EU's internal market¹⁷.

¹⁰ https://commission.europa.eu/system/files/2022-12/Final%20opinion%202022_SBGR2_05%20ELV_rev.pdf

¹¹ https://commission.europa.eu/system/files/2022-12/Final%20opinion%202022_SBGR1_01%20Interconnectivity_rev.pdf

¹² *RegHub* is a network of local and regional authorities which aims to collect experiences of EU policy implementation by consulting players at local level. For more information, see: <https://portal.cor.europa.eu/reghub/Pages/default.aspx>.

¹³ For further information on the work of the RegHub network, see Section 2.4 below.

¹⁴ <https://cor.europa.eu/en/engage/Documents/RegHub/RegHub%20report%20on%2021%20century%20rules.pdf>

¹⁵ The activity of the Regulatory Scrutiny Board is presented in its annual reports: https://commission.europa.eu/law/law-making-process/regulatory-scrutiny-board_en#annual-reports.

¹⁶ SWD(2022) 245 final, Commission Staff Working Document – Impact assessment report accompanying the proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation.

¹⁷ Criminal groups employ a complex web of bank accounts and front companies across jurisdictions to disguise the audit trail and hide the source and ownership of funds. Criminals reportedly target Member States with weaker asset recovery systems. A renewed effort across the EU against the financial means of criminal organisations is thus crucial for the effective recovery of instruments and proceeds of crime. The proposed Directive would facilitate cross-border cooperation and contribute to a more effective fight against organised crime.

Regarding the proportionality of that proposal, this particular impact assessment analysis focused on the extent to which measures are proportionate also compared to the burden on Member States. The analysis looked at possible interference with Member States' freedom to self-organise, and at balancing effectiveness with interference in fundamental rights. It concluded that the impact of the proposed measures on Member States in terms of resources needed and the necessity to adapt national frameworks was outweighed by the expected benefits of authorities being better able to trace and identify, freeze, manage and confiscate illicit assets.

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.

The Regulatory Scrutiny Board scrutinised 10 major evaluations, including 2 fitness checks, in 2022. The evaluations also help assess whether EU action still complies with the principle of subsidiarity and proportionality over time.

For example, the evaluation of the Sewage Sludge Directive¹⁸ found that the Directive maintained its added value compared to purely national regulation, as it is the sole legal instrument providing an EU-wide framework for environmental conditions on soil protection for safe use of sludge on agricultural land in the EU. It sets a minimum level of harmonisation for pollution control, reducing environmental and health risks linked to the recovery of sludge in agriculture. The evaluation showed that, though many Member States had adopted more stringent rules, the minimum level of environmental protection laid down by the Directive served as a basis for national regulations in other Member States and in candidate countries where the minimum standards in the Directive had not yet been attained. The Directive was therefore fully in line with the principles of subsidiarity and proportionality.

2.2. THE EUROPEAN PARLIAMENT¹⁹

In 2022, the European Parliament received 249 submissions from national Parliaments under Protocol No 2. Of these submissions, 34 were reasoned opinions²⁰ and 215 were other contributions (submissions not raising concerns about subsidiarity). By comparison, in 2021 the European Parliament received 227 submissions, of which 24 were reasoned opinions.

Mr Nacho Sánchez Amor (S&D/ES) and Ms Karen Melchior (Renew/DK) were the standing rapporteurs for subsidiarity in the Committee on Legal Affairs (JURI) in 2022, in the first and second half of the year respectively. In 2022, the Committee contributed to the 37th²¹ and 38th²² biannual reports from COSAC on developments in EU procedures and practices relevant to parliamentary scrutiny.

¹⁸ SWD(2023) 157 final.

¹⁹ Sections 2.2 to 2.4 of this report are based on contributions from the respective EU institutions and bodies.

²⁰ The European Parliament and the Commission (which 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 card' or '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. The thresholds are set in Article 7 of Protocol No 2.

²¹ <https://www.parlue2022.fr/content/download/10398/file/37th%20Bi-annual%20Report%20of%20COSAC.pdf?inLanguage=eng-GB>

²² <https://parleu2022.cz/wp-content/uploads/2022/11/3.-38th-Bi-annual-Report-of-COSAC.pdf>

The European Parliamentary Research Service continued to assist the European Parliament in incorporating subsidiarity and proportionality considerations into its work. In 2022 it produced 45 initial appraisals of Commission impact assessments²³, 1 comprehensive analysis of the revised better regulation guidelines²⁴, 6 *ex post* European implementation assessments, 20 implementation appraisals, 4 ‘implementation in action’ papers (including a publication which scrutinises the Commission’s annual work programme), 4 detailed rolling checklists and 1 other study. With regard to EU added value, there were also 2 reports on the cost of non-Europe and 2 on EU added value assessments, 5 papers on the added value of existing EU policies and 3 other publications.

2.3. THE COUNCIL OF THE EUROPEAN UNION

In 2022, 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 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’²⁵, the Council conclusions on: ‘Better regulation – ensuring competitiveness and sustainability, inclusive growth’²⁶; 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’²⁷; and the Council conclusions on ‘Data technologies to improve “Better Regulation”’²⁸.

In addition to its Treaty obligations, the Council keeps Member States informed of national Parliaments’ opinions on legislative proposals. In 2022, the General Secretariat of the Council distributed 32 reasoned opinions received under Protocol No 2 and 152 opinions issued as part of the political dialogue²⁹.

2.4. THE COMMITTEE OF THE REGIONS

In 2022, the Committee of the Regions continued to work on subsidiarity, proportionality and better regulation, guided by the priorities for its 2020-2025 term³⁰. These include: continuing to help improve the quality of EU legislation, better anticipating its territorial impact and promoting the principle of active subsidiarity³¹. This was backed up by the findings of the Committee of the

²³ The definitions of the terms included in this paragraph can be found in IATE, the EU’s terminology database: <https://iate.europa.eu/home>.

²⁴ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/699463/EPRS_BRI\(2022\)699463_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/699463/EPRS_BRI(2022)699463_EN.pdf)

²⁵ 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.

²⁶ Council doc ST 6232/20, points 2. and 12.

²⁷ Council doc ST 13026/1/20 REV 1, points 3. and 12.

²⁸ OJ C 241, 21.6.2021, p. 13.

²⁹ 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 20.

³⁰ 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>.

³¹ The concept of ‘active subsidiarity’ implies that national Parliaments and local and regional authorities provide contributions in the pre-legislative phase to help the Commission calibrate its proposals in the specific multi-level governance context. See the report on ‘active subsidiarity’ by the Task Force on Subsidiarity, Proportionality and ‘Doing less more efficiently’: https://ec.europa.eu/info/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.

Regions EU Annual Report on the State of Regions and Cities 2022³², which underlined the importance of the subsidiarity principle in the EU's cohesion policy and the key role played by the Committee of the Regions in promoting debate on subsidiarity in the Conference on the Future of Europe.

Monitoring of the principles of subsidiarity and proportionality

In 2022, the Committee of the Regions issued 23 opinions on legislative proposals, 31 opinions on other documents or topics, and 8 resolutions. Of these, 24 opinions included explicit references to compliance with the principles of subsidiarity and proportionality or concrete recommendations to improve such compliance. In addition, 7 resolutions addressed issues of subsidiarity and proportionality, including resolutions on the Conference on the Future of Europe (January 2022), on the results and follow-up of the Conference (June 2022), and two resolutions on the 2023 Commission work programme (June and November-December 2022).

The Committee of the Regions' Subsidiarity Steering Group identified 4 priority files for subsidiarity monitoring³³ and 5 additional proposals as 'also relevant' for monitoring³⁴ in 2022. In this period, members of the Committee of the Regions' Subsidiarity Monitoring Network sent 20 contributions to the Committee of the Regions. By the end of the year, the Committee of the Regions had adopted or was in the process of drawing up opinions on most of the initiatives identified and already published.

Active subsidiarity and better regulation in the wider EU context

In the Conference on the Future of Europe, the Committee of the Regions advocated the concept of 'active subsidiarity', in particular with its proposals on how to 'use active subsidiarity to better involve Parliaments, regions and cities in the shaping of EU policies'. This contribution called, among other things, for: systematic use of the subsidiarity 'grid' developed by the Committee of the Regions; more transparent and broader territorial impact assessments to evaluate the impact of EU legislation in cities and regions; the application of subsidiarity to EU governance processes, such as the European Semester. In the event of Treaty reform, the Committee of the Regions called for national/regional Parliaments and/or the Committee of the Regions to be given the right of initiative to propose or abolish EU legislation, and suggested that the principle of proportionality be given the same legal status as the principle of subsidiarity.

The input from the Committee of the Regions' delegation and its then President, Apostolos Tzitzikostas (as 'subsidiarity' rapporteur in the Conference of the Future of Europe working group on Democracy) contributed to the formulation of the conference's key recommendation in this regard, concretely proposal No 40, which stipulates that '[a]ctive subsidiarity and multilevel governance are key principles and fundamental features for EU functioning and democratic accountability'³⁵. Proposal No 40 includes a suggestion to '[r]eform the Committee of Regions to encompass adequate channels of dialogue for regions as well as cities and municipalities, giving it an enhanced role in the institutional architecture, if matters with a territorial impact are concerned' and states that '[s]ystematic use of a subsidiarity definition commonly agreed by all EU institutions could help to clarify whether decisions have to be taken at European, national or regional level'.

³² [4739 Report State of R and C 2022 EN-N - main page.pdf \(europa.eu\)](#)

³³ The priorities identified were: the zero-pollution package (with integrated water management and ambient air quality proposals); the climate measure package (with carbon removal certification and sustainable use of pesticides); the multi-modal digital mobility services proposal; and the proposal on equality bodies.

³⁴ Identified as 'also relevant' were: digital education and skills; minimum income; the European care strategy; the revision of urban waste-water directive; and the EU government interoperability strategy.

³⁵ Conference on the Future of Europe: Report on the final outcome <https://futureu.europa.eu/en/pages/reporting?format=html&locale=en>.

Following on from these recommendations, the 10th Subsidiarity Conference was held on 11 November 2022 in Valencia (Spain)³⁶. With the participation of Commission Vice-President Šefčovič (via video message) and Commissioner Ferreira, and in the presence of Members of the European Parliament, the conference adopted a set of conclusions to further promote the concept of ‘active subsidiarity’ as a central element of the EU’s better regulation agenda and to strengthen the contribution of local and regional levels to evidence-based and future-proof EU policymaking. The conference participants called for active subsidiarity to be mainstreamed throughout the relevant EU governance processes, for a more active role for the Committee of the Regions in subsidiarity monitoring, and for a legislative function in key territorial policies in the event of Treaty reform.

In 2022, the Committee of the Regions continued to develop its better regulation activities, some of which were undertaken in partnership with the Commission and the European Parliament – notably through the ‘Fit for Future’ platform, the RegHub network and the Committee’s contribution to the European Parliament’s report on ‘Better regulation: Joining forces to make better laws’, adopted in May 2022³⁷. The RegHub network contributed to two targeted stakeholder consultations to the ‘Fit for Future’ platform, which fed into two ‘Fit for Future’ platform opinions drafted by rapporteurs from the Committee of the Regions.

The Bureau of the Committee of the Regions created the new Better Regulation and Active Subsidiarity Steering Group (BRASS-G) in June 2022, which was officially launched on 11 November 2022 and replaced the former Subsidiarity Steering Group. The group, chaired by Karl-Heinz Lambertz (BE/PES), former President of the Committee of the Regions, aims to provide ‘more integrated and streamlined CoR governance’ in the area of better regulation, including subsidiarity monitoring, in order to increase the coherence, visibility and impact of the work of the Committee of the Regions and stronger interinstitutional contacts. The Bureau tasked BRASS-G with exploring a specific focus on assessing the territorial impact of EU legislation on rural areas with the aim of developing a rural-proofing approach for the Committee of the Regions.

2.5. THE COURT OF JUSTICE OF THE EUROPEAN UNION

In 2022, the Court of Justice of the European Union rendered some judgments on the application of the principles of subsidiarity and proportionality.

First, the Court of Justice clarified the scope of application of the subsidiarity principle, which, according to Article 5(3) of the Treaty on European Union, applies only in areas which do not fall within the exclusive competence of the EU. The issue emerged in connection with the legal challenge brought by two Member States as regards the General Conditionality Regulation³⁸.

The Court found that a regulation which contains financial rules determining the procedure to be adopted for establishing and implementing the EU budget, within the meaning of Article 322(1)(a) of the Treaty on the Functioning of the European Union, falls within the exercise of a competence of the EU relating to its functioning, which – by its nature – can be exercised only by the EU itself. It concluded that in such case the subsidiarity principle did not

³⁶ ‘Active Subsidiarity: Daring more EU democracy – Creating EU added value’ (<https://cor.europa.eu/en/events/Pages/10th-subsidiarity-conference.aspx>).

³⁷ https://www.europarl.europa.eu/doceo/document/A-9-2022-0167_EN.html

³⁸ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1.

apply³⁹. Consequently, there was no obligation for the Commission to forward its proposal for a regulation to the national Parliaments under Protocol No 2.

However, the General Court held that the principle of subsidiarity did apply to the Regulation setting up the EU merger control system⁴⁰, as it is based in part on Article 352 of the Treaty on the Functioning of the European Union and therefore does not fall within an area of exclusive EU competence⁴¹.

The General Court reiterated that the principle of subsidiarity is composed, on the one hand, of a *negative test*, (testing the proposition that the objectives envisaged cannot be adequately achieved by the Member States acting alone), and, on the other hand, a *positive test* (testing the proposition that the objectives can, by reason of their scale or effects, be better achieved at EU level). Those two components ultimately address a single question from two different angles, namely whether action should be taken at EU level or at national level to achieve the objectives⁴².

Second, the legal challenge to the General Conditionality Regulation also required the Court of Justice to rule on the proportionality principle. The Court pointed out that the EU legislature must be allowed broad discretion, not only over the nature and scope of the measures to be taken in areas involving political, economic and social choices, but also, to some extent, over the finding of the basic facts.

In that case, it was not demonstrated that the EU legislature had exceeded the broad discretion available to it in that regard in considering the need to alleviate the serious risks that may result from breaches of the principles of the rule of law⁴³ – risks for the sound financial management of the EU or the protection of its financial interests. Moreover, the Court rejected the argument that the criteria determining the choice and scope of the measures to be adopted were not sufficiently precise. In particular, it found that the measures taken must be strictly proportionate to the impact of identified breaches of the EU budget or financial interests. In the light of these considerations, the Court rejected the arguments on the alleged breach of the proportionality principle, together with all other pleas⁴⁴.

3. APPLICATION OF THE SUBSIDIARITY CONTROL MECHANISM BY NATIONAL PARLIAMENTS

3.1. OVERVIEW

The Commission received **32 reasoned opinions**⁴⁵ from national Parliaments in 2022⁴⁶. This is considerably higher than in the previous 3 years (2019-2021) and double the number received in

³⁹ Judgment of 16 February 2022 in Case C-157/21, *Poland v European Parliament and Council*, ECLI:EU:C:2022:98, paragraph 241.

⁴⁰ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

⁴¹ Judgment of 13 July 2022 in Case T-227/21, *Illumina v Commission*, ECLI:EU:T:2022:447, paragraph 160. The judgment has been appealed before the Court of Justice (Case C-611/22 P).

⁴² *Ibid*, paragraph 158.

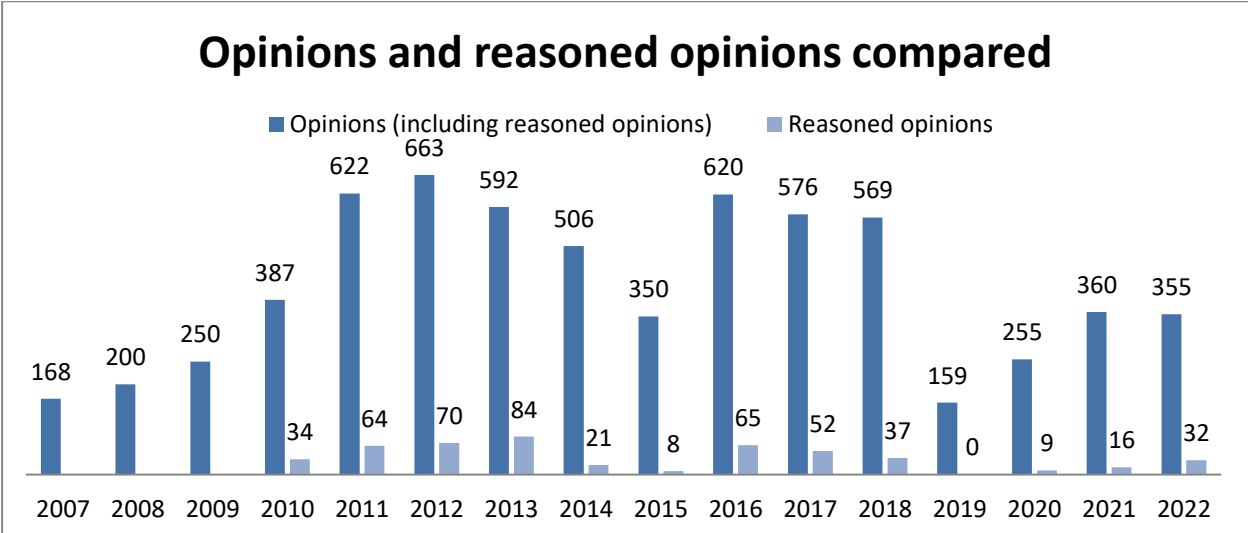
⁴³ Judgment of 16 February 2022 in Case C-157/21, *Poland v European Parliament and Council*, 16 February 2022, ECLI:EU:C:2022:98, paragraphs 354-357.

⁴⁴ *Ibid*, paragraphs 358-363. See also the arguments rejected in the judgment of 16 February 2022 in Case C-156/21, *Hungary v European Parliament and Council*, ECLI:EU:C:2022:97, paragraphs 339-346.

⁴⁵ Under Protocol No 2, any national Parliament or chamber of a national Parliament may, within 8 weeks from the date of transmission of a draft legislative act, in the official languages of the Union, issue a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. See also footnote 51.

2021 (see chart below). Despite this increase, the Commission has observed that a number of reasoned opinions are not grounded on clear-cut criticism of a subsidiarity breach but rather on a perceived lack of analysis of national circumstances.

It is also noteworthy that the number of reasoned opinions and the overall number of opinions have clearly decreased so far during the current Commission’s term of office (since December 2019) compared to the previous two terms (2009-2014 and 2014-2019).



Of the 39 national Parliaments or chambers, 13 issued reasoned opinions in 2022 (compared with 7 in 2021 and 8 in 2020), coming from 10 Member States. The chamber that issued by far the highest number of reasoned opinions was the Swedish *Riksdag* with 14 reasoned opinions, representing more than 40% of the total. Other chambers that issued reasoned opinions in 2022 were the Czech *Poslanecká sněmovna* (4), the French *Sénat* (4), the Danish *Folketing* (2), and the Czech *Senát*, German *Bundesrat*, Dutch *Eerste Kamer*, Hungarian *Országgyűlés*, Irish *Houses of the Oireachtas* (both chambers issued a joint reasoned opinion), Dutch *Tweede Kamer*, Bulgarian *Narodno Sabranie* and Finnish *Eduskunta* (all having issued 1).

The 32 reasoned opinions received in 2022 concerned **24 different proposals** (see Annex 1). Only 4 proposals received more than 1 reasoned opinion, and none more than 5. Out of the 32 received, 5 related to the European Parliament proposal to reform the European electoral law, 4 to the proposal for a European Media Freedom Act and 2 to the proposals for the revised gas markets and hydrogen Directive⁴⁷ and Regulation⁴⁸. The remaining reasoned opinions each covered a different Commission proposal. Out of the Commission’s six headline priority areas for 2019-2024⁴⁹, the two priorities that received the highest number of reasoned opinion were ‘A new push for European democracy’ and ‘A European Green Deal’.

The following Section 3.2 covers the key cases of proposals that received more than one reasoned opinion.

⁴⁶ This number refers to the total number of opinions received from parliamentary chambers under Protocol No 2. See also footnote 20 and Annex 1 for the list of Commission documents on which the Commission received reasoned opinions.

⁴⁷ COM(2021) 803 final.

⁴⁸ COM(2021) 804 final.

⁴⁹ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en

3.2. KEY CASES

On the proposal to reform the **European electoral law**⁵⁰, a proposal presented by the European Parliament under Article 14(2) of the Treaty of the European Union, the Commission received reasoned opinions from the Swedish *Riksdag*, the Danish *Folketing*, the Dutch *Eerste* and *Tweede Kamer* and a joint opinion from both chambers of the Irish *Houses of the Oireachtas*. Since 2017, no individual proposal had received so many reasoned opinions accounting for so many votes (8), although this was still well short of the threshold for a ‘yellow card’⁵¹.

For the Swedish *Riksdag*, the goals set in the European Parliament’s proposal could be better achieved by Member States themselves. This is because the Swedish rules for EU elections are similar to those for national elections, familiar to voters and would help maintain trust in the reliability of existing rules. Both the Swedish *Riksdag* and the Danish *Folketing* asserted that the internal organisation of political parties and the functioning of electoral campaigns should be regulated at national level to take account of national practices and traditions. The *Folketing* had a similar view on lowering the voting age to 16. The Irish *Houses of the Oireachtas* stated that the proposal did not justify, with qualitative and quantitative indicators, why its objective could not be sufficiently achieved by Member States. As a result, they concluded that the proposal could not be deemed to comply with the principle of subsidiarity as it does not demonstrate that the results could be better achieved at EU level and that it thus might encroach on an area of national competence.

In addition to these reasoned opinions, the Czech *Poslanecká sněmovna* supported the Czech Government’s many reservations about the draft regulation in its framework position, and expressed reservations on most of the proposed provisions. In particular, it opposed: lowering the voting age to 16 and the minimum age for standing for election to 18; introducing the possibility of postal voting in elections to the European Parliament; introducing strict quotas or alternating lists supporting women’s representation; creating a pan-European constituency; and setting up a new body for election purposes. The Czech *Senát* also expressed reservations about some of the proposed changes with respect to the principle of subsidiarity⁵². In contrast, the German *Bundesrat* issued an opinion broadly supporting the proposal, as part of the political dialogue.

Under the priority ‘A new push for European democracy’, the proposal for a **European Media Freedom Act**⁵³ triggered 4 reasoned opinions and 8 opinions as part of the political dialogue, including one own-initiative opinion ahead of the publication of the proposal.

In their reasoned opinions, two chambers perceived a lack of respect for national cultural traditions. The Hungarian *Országgyűlés* believed that the proposed regulation would lead to a high level of harmonisation, which it regarded as unwarranted given the different traditions in Member States and the fragmentation of the media market caused by linguistic and cultural specificities. The German *Bundesrat* objected to excessive interference with Member States’ cultural sovereignty and existing German regulation (media regulation is a competence of the *Länder*). Moreover, it disagreed with the choice of an internal market legal basis to regulate media in Europe. In addition, the reasoned opinion of the French *Sénat* argued that ensuring

⁵⁰ 2020/2220(INL).

⁵¹ The ‘yellow card’ threshold, triggering a mandatory review of a draft legal act, is reached when reasoned opinions received from national Parliaments account for at least a third of all votes allocated to them (18 out of 54). Each national Parliament has two votes; in the case of a bicameral system, each chamber has one vote. For draft legislative acts submitted under Article 76 of the Treaty on the Functioning of the European Union in the area of freedom, security and justice, the threshold is one quarter of the votes (14 out of 54).

⁵² As the proposal is a draft legislative act from the European Parliament, the Commission does not respond to the concerns expressed by national Parliaments.

⁵³ COM(2022) 457 final.

diversity of opinion could not be based on economic criteria and questioned the choice of the legal basis and added value of the proposed legislation. The Danish *Folketing* considered that, given the limited cross-border elements, the media could be better regulated at national level. All reasoned opinions, except for that of the Danish *Folketing*, indicated that a directive would have been a more appropriate legal instrument than a regulation.

Some of the opinions issued as part of the political dialogue echoed the above-mentioned objections regarding the interference with national competences on cultural matters and the choice of a regulation as a legal instrument, while they also raised several additional views. For instance, the Irish *Houses of the Oireachtas* suggested focusing more on digital literacy. The Dutch *Eerste Kamer* called for the inclusion of minimum standards for working conditions and job security for journalists, to make freelance journalists less vulnerable. The Czech *Poslanecká sněmovna* and the Czech *Senát* expressed doubts on the legal basis and called for the power and scope of the European Media Services Board to be clarified. The Italian *Camera dei Deputati* suggested clarifying if national authorities could adopt specific measures in response to purely national or local market circumstances. It further suggested considering if there was a need to impose prior consultation obligations on national regulatory authorities and bodies.

In its replies, the Commission underlined that the cross-border nature and extent of the problems affecting the functioning of the internal market for media services called for a regulation at EU level. On the legal basis, the Commission referred to the view of the European Court of Justice in its judgments that the EU legislator could intervene to protect and develop the internal market in a given economic field. The Commission thus took the stance that it not only had the competence to take action to improve the functioning of the internal market but was also empowered to consider society's legitimate public interests and the protection of fundamental rights. It explained that Article 114 of the Treaty on the Functioning of the European Union could serve as legal basis – adding that the proposal did not impose any media content requirements on media service providers, and that the competences for regulating media pluralism were recognised and preserved. The Commission further stressed that the proposal explicitly enabled Member States to adopt more detailed rules in specific areas relating to the provision of media services, recognising national and regional traditions of media regulation.

On the choice of the legal instrument, the Commission explained that it opted for a regulation because it was important to grant media market players directly applicable rights in those Member States where the functioning of the media market was undermined, and because it wanted to avoid a lengthy transposition period. As for the European Board for Media Services, the Commission highlighted that media supervision remained with national authorities and that the role of the Board was limited to the coordination of Member States' actions. This was because providing cross-border services required such coordination and an exchange platform.

Under the priority 'A European Green Deal', each chamber of the Czech Parliament issued a reasoned opinion on two of the proposals under the **hydrogen and decarbonised gas markets package**: the **proposals for the revised gas markets and hydrogen directive**⁵⁴ and the **regulation**⁵⁵. The Irish *Houses of the Oireachtas* also issued a political dialogue opinion on these two proposals, which also covered the proposal to reduce methane emissions in the energy sector⁵⁶.

In their near-identical reasoned opinions, the Czech chambers stated that the Commission had not submitted impact assessments on the situation in individual Member States. This prevented national Parliaments from thoroughly assessing all the implications of the proposals at national

⁵⁴ COM(2021) 803 final.

⁵⁵ COM(2021) 804 final.

⁵⁶ COM(2021) 805 final.

level. Furthermore, they explained that the Commission had not provided evidence that the proposed measures could be put in place within a reasonable timeframe and at a reasonable cost by Member States. They also believed that the EU added value of the chosen measures was not demonstrated. Both chambers further expressed doubts that the provisions on unbundling hydrogen network operators could help develop the hydrogen market effectively and feared that investment in the development of hydrogen infrastructure might not be stimulated.

The Irish *Houses of the Oireachtas* asked for a much greater emphasis on green hydrogen and a clearer and earlier prioritisation of infrastructure to accelerate and support green hydrogen production and storage. They also asked for stronger efforts to examine and address the issue of storage. In relation to green and low-carbon hydrogen, they asked the Commission to ensure that the fossil fuel industry would not be sustained in the hydrogen market in the longer term. Additionally, they argued that the deadline for authorising new fossil fuel contracts should be brought forward significantly in order to ensure that countries are encouraged to aim for an earlier transition to renewables.

In its replies, the Commission explained that the level of detail in the accompanying impact assessment sufficiently addressed the overall impact of the proposed legislation. In view of the emerging nature of the hydrogen economy and the uncertainties of market development, a more detailed quantification of impacts would not be feasible or meaningful. However, the Commission underlined that the accompanying study on hydrogen regulation contained an assessment of regional market characteristics for hydrogen. Furthermore, the Commission stressed that a fragmented regulatory landscape with differences in network access between Member States could impede cross-border trade in hydrogen and risked slowing down the emergence of a European hydrogen supply chain.

As regards the proposed rules on unbundling hydrogen networks, the Commission considered that experience in the gas and electricity sectors had shown that separating energy network transport from energy production and sale was necessary and appropriate. Lastly, the Commission pointed out that a similar approach for cross-border tariffs had been successfully applied to cross-border electricity transmission since 2004. The Commission also explained that developing renewable hydrogen was still the EU's priority. However, it recognised that, in the short and medium term, some form of low-carbon hydrogen and carbon capture and storage might still be needed. On the timeframe, the Commission stated that, based on the impact assessment, the year 2049 had been identified as the most cost-effective option, considering economic and environmental impacts, as well as the effectiveness of the measure.

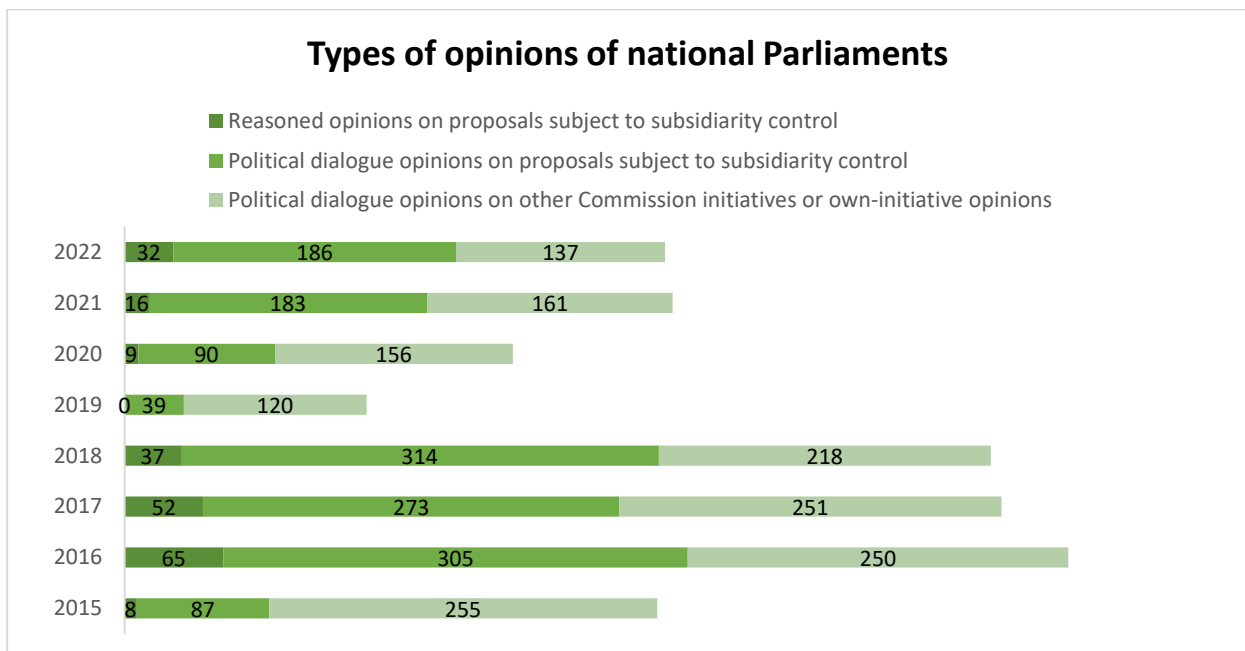
4. WRITTEN POLITICAL DIALOGUE WITH NATIONAL PARLIAMENTS

In addition to the subsidiarity scrutiny mechanism anchored in Protocol No 2, the Commission's relations with national Parliaments also cover other activities, notably the political dialogue put in place in 2006. This includes written exchanges on any Commission initiative that national Parliaments want to give input on or any subjects they want to raise on their own initiative. It also includes the oral political dialogue (described in Section 5).

4.1. GENERAL OBSERVATIONS

In 2022, national Parliaments sent **355 opinions** to the Commission, almost the same number as in the previous year (360 opinions). This confirms the trend that the number of national Parliament opinions generally peaks in the middle of the respective Commission's term of office, but also shows that the number of opinions received so far in the current term (2019-2024) is much lower than in the middle years of the two previous terms⁵⁷.

⁵⁷ 569 opinions in 2018, 576 in 2017 and 620 in 2016.



Of these 355 opinions, 218 (61.4%) related to legislative proposals that were subject to the subsidiarity control mechanism⁵⁸. The other 137 opinions (38.6%) concerned mainly non-legislative initiatives, such as communications, or were own-initiative opinions not directly related to a Commission initiative. This figure is lower in both absolute and relative terms than in the previous 2 years. This shows that national Parliaments focused their analysis of Commission initiatives on draft legislative acts subject to subsidiarity control, a trend typical for the years in a Commission’s term of office with a high number of legislative proposals.

Within the Commission the points raised by the national Parliaments or chambers are specifically brought to the attention of the relevant Members of the Commission and Commission departments and, for legislative proposals, to Commission representatives taking part in the negotiations between the co-legislators.

4.2. 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 279 opinions or 79%** of the total, in line with the average for recent years⁵⁹. The number of national Parliaments or chambers that did not issue any opinions decreased slightly⁶⁰ from 8 to 7 chambers⁶¹ out of 39. This means that 5 Member States⁶² (the same number as in the previous year but not the same group) – representing less than a fifth of the total – did not engage in the written political dialogue in 2022. Overall, this shows a stable participation of national Parliaments in subsidiarity scrutiny and the political dialogue (see also figure below, comparing the concentration of opinions amongst the 10 most active chambers).

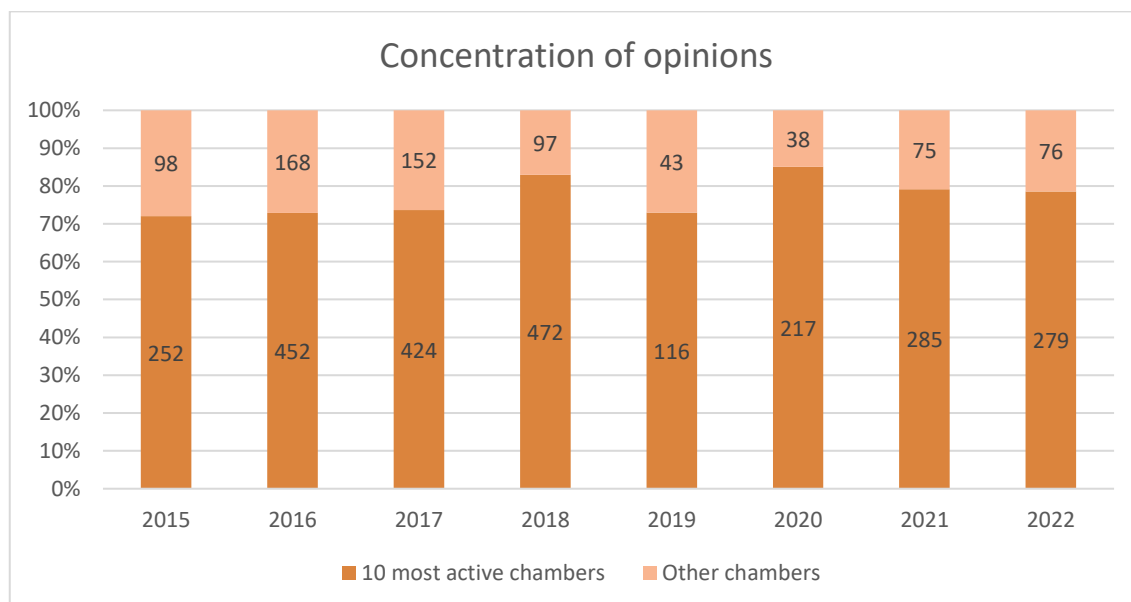
⁵⁸ For more information on the subsidiarity control mechanism and the political dialogue, see https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/reasons-national-parliaments_en. Legislative proposals relating to policies where the EU has exclusive competence are not subject to subsidiarity scrutiny by national Parliaments.

⁵⁹ 2021: 79%; 2020: 85%; 2019: 73%; 2018: 83%; 2017: 74%; 2016: 73%.

⁶⁰ 8 in 2021, 12 in 2020, 17 in 2019, 10 in 2018.

⁶¹ See Annex 3.

⁶² The national Parliaments in Estonia, Greece, Cyprus, Latvia, and Malta.



The 10 national Parliaments or chambers that sent the highest number of opinions in 2022 were: the Czech *Senát* (58 opinions), the Spanish *Cortes Generales* (46 opinions), the Romanian *Camera Deputațiilor* (33 opinions), the Czech *Poslanecká sněmovna* (30 opinions), the German *Bundesrat* (30 opinions), the Portuguese *Assembleia da República* (19 opinions), the Swedish *Riksdag* (18 opinions), the Romanian *Senat* (17 opinions), the French *Sénat* (15 opinions) and the Italian *Camera dei Deputati* (13 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 verifying 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 *Poslanecká sněmovna* and *Senát*, the Hungarian *Országgyűlés*, the Polish *Sejm* and *Senat* and the Slovak *Národná Rada* were particularly active in sending joint own-initiative opinions. The French *Assemblée nationale* was very active in sending them individually.

4.3. MAIN TOPICS OF THE OPINIONS IN THE POLITICAL DIALOGUE

As for single initiatives, national Parliaments sent the highest number of opinions on the proposals for a **European Media Freedom Act** (12 opinions), for a Regulation on the **sustainable use of pesticides** (9 opinions), for a Directive on **improving working conditions in platform work** (8 opinions) and on the European Parliament's proposal for a reform of the **European electoral law** (8 opinions). In 5 opinions on the **Commission's 2022 work programme**, national Parliaments indicated their own priorities for 2022 to the Commission.

Annex 3 lists the single Commission initiatives that triggered at least five opinions, while the following sections provide an overview across the Commission's six headline priority areas.

Priority 'A European Green Deal'

As for **packages of proposals**, two strategies under the 'A European Green Deal' priority received the most attention in 2022, namely the **EU biodiversity strategy for 2030** (13 opinions) and the **Sustainable and smart mobility strategy** (11 opinions). Under the same priority, the **renovation wave strategy** also triggered a significant number of opinions (5).

Under the EU biodiversity strategy for 2030, national Parliaments expressed their views on the proposal for a Regulation on the **sustainable use of pesticides**⁶³ (3 opinions⁶⁴, which account for 8 since one was signed by six chambers, and 1 reasoned opinion)⁶⁵ and on the proposal for a **Regulation on nature restoration**⁶⁶ (4 opinions and 1 reasoned opinion).

Two chambers claimed that the proposal for a **Regulation on the sustainable use of pesticides** did not respect the principle of subsidiarity. They argued that the reduction in the use of plant protection products envisaged in the proposal lacked a sufficiently detailed impact assessment, which disregarded the different starting positions and circumstances of Member States. They also argued that binding targets for an increase in the agricultural area utilised for organic farming, included in the proposal, already exist at national level. As regards proportionality, one chamber claimed that, despite the declared objective of the proposal to update existing rules, the proposal added several rules (such as on data registers and crop-specific provisions), which would go against the principle of proportionality. Other issues raised were: (i) the change in methodology for setting reduction targets below those set in the ‘farm to fork’ strategy; (ii) the need to allow Member States some flexibility when setting their own binding reduction targets; (iii) the recognition of different starting points and circumstances of Member States; and (iv) the need to take into account the impact of the Russian war of aggression against Ukraine.

In its replies, the Commission explained that the proposal respected the principle of subsidiarity because: (i) it did not oblige Member States to adopt legally binding targets or any specific targets in relation to organic farming; (ii) it was more appropriate for this policy to be drawn up at EU level instead of national level; and (iii) each Member State could choose different policy methods for achieving the targets. The Commission also explained that it respected the principle of proportionality given that the need to improve monitoring data and the application and enforcement of integrated pest management were core conclusions of the evaluation of the 2009 Directive. Furthermore, the Commission noted that, as shown in the subsidiarity grid accompanying the adopted proposal, compliance of all policies with the subsidiarity and proportionality principles had been considered and explained in detail before the adoption of the proposal. Concerning the alleged lack of an impact assessment, the Commission reassured national Parliaments that a comprehensive impact assessment had been carried out, fully in line with the Commission’s better regulation agenda.

The Commission also explained that it had not been able to fully assess the different starting positions and individual circumstances of Member States in the impact assessment, due to limited data availability, but that it was nevertheless actively engaged in discussing alternative methodologies, where appropriate.

The **proposal for a Regulation on nature restoration** triggered five opinions (including one reasoned opinion)⁶⁷. Most national Parliaments agreed on the overall need to restore ecosystems. However, one Parliament saw a breach of the principle of subsidiarity. It identified excessive interference with national competences on forestry and considered that detailed regulation of agricultural land use and forestry constituted a breach of the proportionality principle. Two other chambers pointed to the high compliance costs and limited flexibility for Member States.

⁶³ COM(2022) 305 final.

⁶⁴ Hungarian *Országgyűlés*, Czech *Senát* and a joint opinion issued by the Hungarian *Országgyűlés*, the Czech *Poslanecká sněmovna*, the Czech *Senát*, the Slovak *Národná Rada*, the Polish *Sejm* and the Polish *Senat*.

⁶⁵ Swedish *Riksdag*.

⁶⁶ COM(2022) 304 final.

⁶⁷ Swedish *Riksdag*, Finnish *Eduskunta*, Portuguese *Assembleia da República*, Czech *Senát* and Czech *Poslanecká sněmovna*.

In its replies, the Commission underlined that EU-wide rules and obligations were necessary due to the scale and transboundary nature of biodiversity loss and the degradation of ecosystems. Moreover, it pointed out that the EU had competences relating to forestry, like climate and environment, as confirmed by the Court of Justice of the European Union. As a result, it had proposed the first comprehensive law of its kind, setting out legally binding targets to significantly restore biodiversity and ecosystems. The Commission emphasised that the proposed approach would make it possible to consider the variety of natural and geographic conditions across the EU, the different conditions of Member States' ecosystems, as well as different starting points for restoration, and that Member States still had a large degree of flexibility in setting out specific details in their national restoration plans.

Under the Sustainable and smart mobility strategy, the **Communication on the new EU urban mobility framework**⁶⁸ triggered 5 opinions and the **revision of the Regulation on the trans-European transport network**⁶⁹ triggered 5 opinions and 1 reasoned opinion.

All five opinions⁷⁰ on the new **EU urban mobility framework** welcomed the initiative, underlining its contribution to the green and digital transitions, in particular to reducing emissions and achieving climate goals. The opinions identified good ways of leveraging the framework for the transition: (i) the 'Fit for 55' package; (ii) the Connecting Europe Facility funding programme; (iii) linking mobility to spatial planning; (iv) more effective vehicle access regulations, respecting the principle of subsidiarity; (v) education, skills and social aspects; and (vi) the promotion of public transport and the bicycle industry. Questions raised concerned indicators and burdens associated with data collection and national plans; risks of 'transport poverty', linked to affordability and inclusiveness; and the importance of including rural areas.

In its replies, the Commission reiterated that the new framework aimed to support the transition to safe, accessible, inclusive, smart, resilient and zero-emission urban mobility. The proposals in the Fit for 55 package would also provide tools for sustainable mobility, including social aspects. While pointing to the non-binding nature of the framework, it explained that measures on sustainable urban mobility (for example, adoption of a plan and collection of data) for the 424 largest cities in the EU were set out in the proposed revision of the Regulation on the trans-European transport network (TEN-T). The Commission underlined that it had long urged (with support from the European Court of Auditors)⁷¹ Member States to collect data of sufficient quality and implement sustainable urban mobility plans. It referred to the prominence it had given to ensuring adequate connectivity, which should include rural, suburban and remote areas⁷². It also pointed to upcoming studies on vehicle access regulations and transport poverty, the preparation of a Commission recommendation on national programmes to support regions and cities in urban mobility planning and recent Council recommendations on fair transition⁷³, individual learning accounts⁷⁴ and micro-credentials for lifelong learning and employability⁷⁵.

⁶⁸ COM(2021) 811 final.

⁶⁹ COM(2021) 812 final.

⁷⁰ German *Bundesrat*, French *Assemblée nationale*, Czech *Senát*, Czech *Poslanecká sněmovna*, Romanian *Camera Deputaţilor*.

⁷¹ European Court of Auditors, Special Report 06/2020 'Sustainable Urban Mobility in the EU: No substantial improvement is possible without Member States' commitment'.

⁷² As raised in the Sustainable and smart mobility strategy, COM(2020) 789 final, and the long-term vision for the EU's rural areas, COM(2021) 345 final.

⁷³ Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality, 2022/C 243/04.

⁷⁴ Council Recommendation of 16 June 2022 on individual learning accounts, 2022/C 243/03.

⁷⁵ Council Recommendation of 16 June 2022 on a European approach to micro-credentials for lifelong learning and employability, 2022/C 243/02.

In a reasoned opinion on the **revision of the Regulation on the trans-European transport network**, one chamber argued that a number of proposed provisions did not comply with the principle of subsidiarity. According to that chamber, they would encroach on Member States' competences regarding programming, the governance model of steering cross-border projects via implementing acts and the obligation to adopt sustainable urban mobility plans and maintain transport infrastructure. Several chambers expressed overall support for the initiative, in particular for EU action to develop a high-performing high-speed rail network. One chamber highlighted the importance of the principle of proportionality and called for an assessment of the definition of the TEN-T network, in particular with regard to its nodes. Another chamber asked for clarifications on planned funding to support the modal shift to rail and the development of inland waterways and called for more rigorous piloting and follow-up of the main projects. A third chamber noted that the proposed requirements for rail infrastructure were ambitious, asked that provisions on urban nodes reflect the partition of national powers, and shared concerns that obligations (such as on infrastructure maintenance) could increase administrative burdens. A fourth chamber was supportive, but underlined possible disadvantages of smaller transport network catchment areas.

In its replies, the Commission acknowledged that drawing up and implementing national plans and programmes was a responsibility of Member States. However, it stressed that significant collective efforts were needed to achieve the ambitious objectives of a truly European transport network (a key action in the European Green Deal and the Sustainable and smart mobility strategy). The Commission explained that the proposal aimed to better align national planning with EU transport policy and give guidance, while leaving significant room for manoeuvre on sustainable urban mobility plans and infrastructure maintenance. The Commission noted that requiring Member States – via implementing acts – to set up a single body for the construction and management of projects would be fully in line with Articles 170 to 172 of the Treaty on the Functioning of the European Union. This was because its scope included projects of common interest of a cross-border nature, thus going beyond national remits.

However, the inclusion of sections or nodes in the network was in all cases to be agreed with the Member State concerned. On rail transport, the Commission gave details on available funding in 2021-2027 to support a higher uptake of rail transport (approximately EUR 80 billion could be made available, in addition to opportunities via the European Investment Bank and InvestEU) and the development of inland waterways (as set out in the Commission's NAIADES III action plan⁷⁶).

Under the **Renovation wave strategy**, the revision of the **Energy Performance of Buildings Directive**⁷⁷ also received considerable attention from national Parliaments with 1 reasoned opinion⁷⁸ and 4 opinions issued as part of the political dialogue⁷⁹.

In a reasoned opinion, one national Parliament argued that the objectives (reducing greenhouse gas emissions and final energy consumption from buildings by 2030 and a climate-neutral EU by 2050) could be achieved more systematically and effectively at Member State level. Several other chambers stressed that national or regional circumstances should be taken into account. There were calls to let Member States set energy class boundaries and set out their own paths to a climate-neutral building stock, in line with national framework conditions and their specific characteristics. One chamber also requested that the principle of energy retrofitting for existing

⁷⁶ COM(2021) 324 final.

⁷⁷ COM(2021) 802 final.

⁷⁸ Finnish *Eduskunta*.

⁷⁹ Austrian *Bundesrat*, German *Bundesrat*, Czech *Senát* and Italian *Senato della Repubblica*.

buildings should be applied to the worst-performing buildings and asked for changes in the methodology for calculating the energy performance of buildings.

In its replies, the Commission stressed that decarbonising buildings without effective and coordinated efforts across the EU would lead to an unfair distribution of the burden and a spill-over effect of higher energy consumption and greenhouse gas reduction costs for the entire EU. It stated that the role of the EU was crucial to make sure that the regulatory framework achieved comparable levels of ambition and was consistently enforced. In the Commission's view, the proposal achieved a good balance between EU-wide measures and national policies to gradually transform building stock with sufficient flexibility at national, regional and local level. On other aspects, the Commission recalled that Member States could exempt certain cultural heritage buildings from minimum energy performance standards but that such requirements were needed.

Priority 'Promoting our European way of life'

Under the priority 'Promoting our European way of life', the following three highlighted proposals triggered considerable interest from national Parliaments.

The Commission received five opinions⁸⁰ on the proposal for a **Regulation on situations of instrumentalisation in the field of migration and asylum**⁸¹, most of which also covered the **revision of the Schengen Borders Code**⁸². Two chambers stressed that the fight against illegal migration and smuggling had to be a top priority in the EU's asylum and migration policy. They also stressed the need to clearly specify the reasons and procedures for introducing temporary protection at the EU's internal borders as a last resort. They considered it important that the Commission listened to the countries concerned when preparing policy initiatives on migration and asylum and responding to migration instrumentalisation. Similarly, another chamber asked for clearly defined instruments and requested the reintroduction of internal border controls to be linked to alternative measures. A fourth chamber sent questions on the link between the Schengen rules and fundamental rights issues and restricting migratory flows.

The Commission agreed in its replies that the views of the Member States affected by the instrumentalisation of migration had to be fully taken into account. It flagged that it had streamlined the existing provisions and pointed to the existing safeguards resulting from the case law of the Court of Justice of the European Union. The Commission reiterated that the facilitation of irregular entry, transit or stay was an offence under EU law and that Member States had to impose suitable penalties. The Commission expressed its commitment to ensuring compliance with the guarantees currently provided for in the Schengen Borders Code. It also stated that operational police controls in border areas had to be carried out in a proportionate manner and that these should not become border controls in disguise or disproportionately affect cross-border movements.

As part of the EU strategy for a more effective fight against child sexual abuse, the Commission adopted a proposal for a **Regulation to fight child sexual abuse online**⁸³, which triggered five opinions⁸⁴. One chamber considered it crucial to find the balance between preventing child sexual abuse and protecting the right to privacy, stressing that the right to protect encrypted communication must be respected. Similarly, another chamber pointed out that freedom of expression, communication and media freedom are supreme social goods and are protected under

⁸⁰ Romanian *Senat*, Czech *Senát*, Czech *Poslanecká sněmovna*, Dutch *Eerste Kamer* and Spanish *Cortes Generales*.

⁸¹ COM(2021) 890 final.

⁸² COM(2021) 891 final.

⁸³ COM(2022) 209 final.

⁸⁴ Czech *Poslanecká sněmovna*, German *Bundesrat*, Dutch *Eerste Kamer*, Portuguese *Assembleia da República* and Spanish *Cortes Generales*.

constitutional law. It also emphasised that the competence for media regulation lay with Member States. Another chamber sent a number of questions, from several political groups from the left, indicating a fundamental objection to the scanning of all communications, which was considered to be seriously intrusive to privacy.

In its replies, the Commission underlined that the proposal framed detection as a measure of last resort and that the Commission would neither collect nor process any data. Providers would be ordered to detect online child sexual abuse only when, after mitigation measures were taken, there was still a significant risk that the service in question would be used for child sexual abuse. The Commission flagged that it aimed to balance all fundamental rights at stake fairly, while minimising interference with users' right to privacy and personal data protection. Complementary safeguards were planned and the collection of information for profiling users or obtaining undue information about their private lives would not be permitted.

Priority 'A Europe fit for the digital age'

Under the priority area of 'A Europe fit for the digital age', the proposal on **improving working conditions in platform work**⁸⁵ triggered opinions from eight chambers⁸⁶ (among them one reasoned opinion and two opinions also covering the Communication on better working conditions for a stronger social Europe⁸⁷). The reasoned opinion criticised excessive interference with national labour markets, undermining the autonomy of social partners, and opposed an EU-level definition of 'employee'. Most chambers requested further clarification on the scope and on the difference between the categories of genuinely self-employed people and employees. They warned that giving employee status to platform workers might lead to an increased number of disputes in Member States and create major legal and financial problems for platform managers. Moreover, national Parliaments warned that excessive regulation of platform work might increase the administrative burden for platforms and encourage them to reduce the availability of services for users and employment opportunities in certain Member States. One chamber issued a favourable opinion and particularly appreciated that the protection applied even in the absence of an employment contract.

In its replies, the Commission underlined that the proposal respected national labour market models and aimed at improving working conditions via the right classification of platform workers, allowing them to benefit from existing rights they should have as 'workers'. The Commission flagged that genuinely self-employed people could enjoy the freedoms and autonomy that come with this status and that it was not seeking to lay down an EU-level concept of 'worker'. Moreover, the Commission emphasised that clear criteria would ensure greater legal certainty for platforms and their workers, and platforms would be able to adapt and adjust to the new rules without losing their competitiveness on the EU market.

Priority 'A new push for European democracy'

Under the priority headline for 'A New Push for European Democracy', the **revision of the Environmental Crime Directive**⁸⁸ triggered 5 opinions⁸⁹ (one of them reasoned). One national Parliament considered that the proposal conflicted with the principle of subsidiarity as regards the rules on supplementary sanctions, especially the temporary ban on running for elected or

⁸⁵ COM(2021) 762 final.

⁸⁶ Spanish *Cortes Generales*, Swedish *Riksdag*, Czech *Poslanecká sněmovna*, Czech *Senát*, Italian *Senato della Repubblica*, Romanian *Senat*, Italian *Camera dei Deputati* and French *Sénat*.

⁸⁷ COM(2021) 761 final.

⁸⁸ COM(2021) 851 final.

⁸⁹ Swedish *Riksdag*, Czech *Senát*, Irish *Houses of the Oireachtas*, German *Bundesrat* and Spanish *Cortes Generales*.

public office. Similarly, another chamber argued that the Treaties did not allow for the introduction of new types of criminal sanctions that did not exist in the law of all Member States. That chamber also requested that the definitions of criminal offences leave room for sanctioning less serious cases as administrative offences. It also requested that the proposed minimum levels for maximum terms of imprisonment and the proposed limitation periods should not interfere with the systematic grading in Member States' criminal codes. The vagueness of some definitions was also raised, fearing that this could make enforcement less effective. Another chamber welcomed the aim of ensuring effective, dissuasive and proportionate types of sanctions and penalties for environmental crimes, but pointed to the significant impact on the duration of planning and approval procedures, at odds with existing or possibly new acceleration instruments in national environmental and permitting law.

In its replies, the Commission explained that it was guided by the general principle that convicted criminals should not be considered fit to hold an elected or public office, an integral part of many Member States' legal systems. The Commission referred to the Treaty on the Functioning of the European Union, which allows for the setting out of minimum rules on criminal sanctions in a Directive. With regard to minimum levels for maximum terms of imprisonment, the proposed levels reflected the seriousness of environmental crime, which has started to endanger life on the planet. The length of the limitation periods reflected the fact that environmental crime was often only detected a considerable time after it was committed. The Commission also stated that its proposal did not affect opportunities to accelerate permit procedures.

As in previous years, a number of national Parliaments⁹⁰ analysed the **Commission work programme**⁹¹. Overall, all these opinions underlined support for the priorities and upcoming Commission initiatives. Four chambers referred to the impact of Russia's war of aggression against Ukraine and asked the Commission to put this matter at the centre of its actions.

In its replies, the Commission mentioned the largest set of restrictive measures it had ever adopted, targeting Russia's financial system, its high-tech industries and its elite. It also pointed to the fact that the EU was closely coordinating these measures with its partners and allies, including NATO, the G7, the United States, the United Kingdom, Canada, Norway, South Korea, Japan and Australia. It also mentioned the initiatives underway to tackle the EU's dependence on Russian fossil fuels, address the energy crisis and drive the green transition, as well as to continue addressing the economic and social consequences of the COVID-19 pandemic.

⁹⁰ The Croatian *Hrvatski Sabor*, the Dutch *Tweede Kamer*, the French *Sénat*, the Lithuanian *Seimas*, the Portuguese *Assembleia da República* sent opinions in 2022, and the Swedish *Riksdag* sent one at the end of 2021.

⁹¹ COM(2021) 645 final. The Swedish *Riksdag*, in its opinion of December 2021, supported the six headline ambitions of the Commission and the initiatives on strengthening the rule of law, the single market and foresight. It pointed to national competences in the field of defence. Further, the *Riksdag* expressed particular interest in the REFIT programme and requested more comprehensive information on REFIT initiatives. The Commission responded that its online REFIT Scoreboard provided an overview of simplification initiatives and their status, and also referred to its 'Fit for future' platform. On defence, the Commission noted that work on European defence policy primarily aimed at enabling the EU's joint defence capacity, ensuring greater interoperability of defence products and making research spending more efficient across the EU.

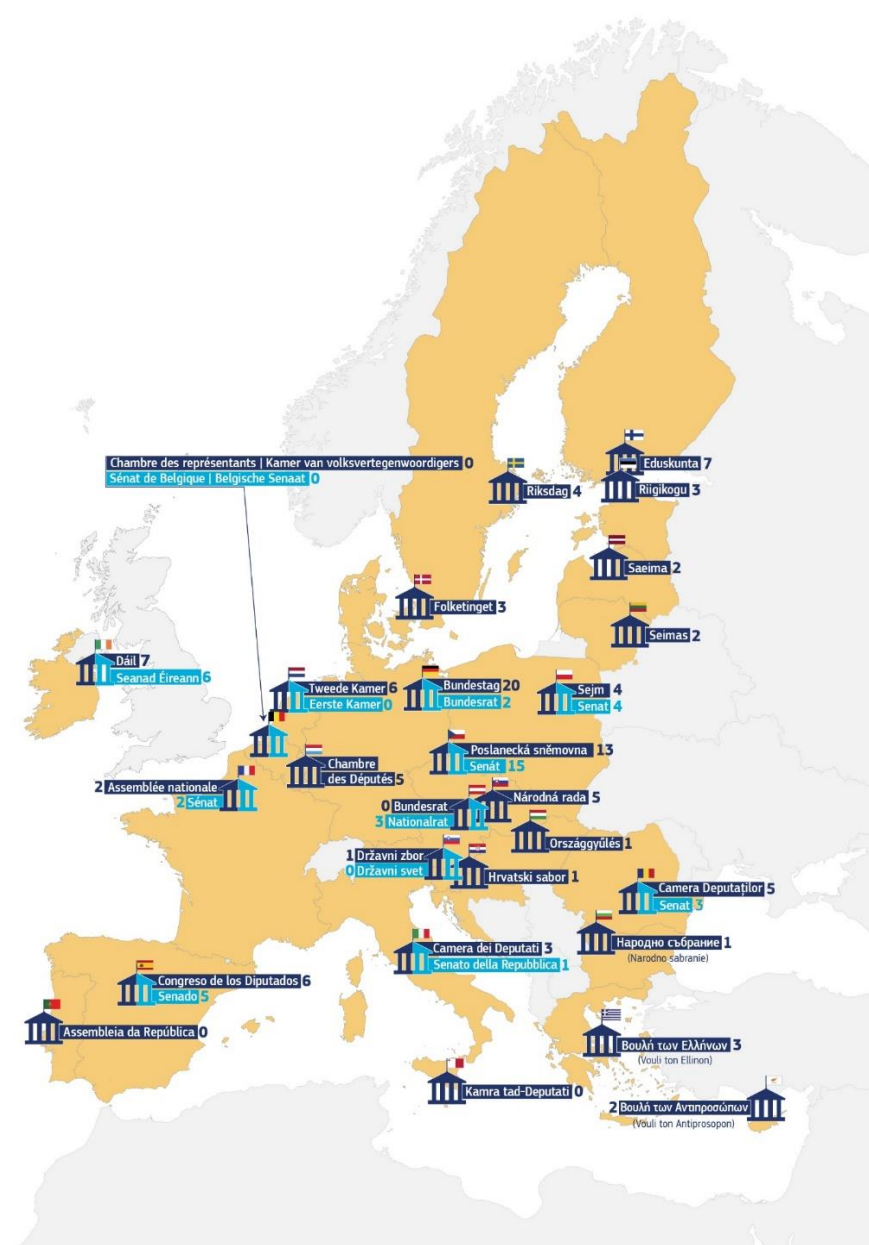
5. CONTACTS, VISITS, MEETINGS, CONFERENCES AND OTHER ACTIVITIES

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 COSAC), Commission presentations to the permanent representatives of national Parliaments in Brussels, ongoing debates on Commission work programmes, and European Semester dialogues.

In 2022, Members of the Commission participated in 147 visits to national Parliaments and meetings with national Parliaments' delegations, covering almost all national Parliaments and chambers. The number is higher than in the three previous years (130 in 2021, 101 in 2020, and 55 in 2019). The Commission also received an increasing number of visits from groups of staff from various national Parliaments.

Number of visits to and meetings with national Parliaments from Members of the Commission in 2022 (total for all Member States: 147)



Interparliamentary meetings and conferences

For interparliamentary meetings and conferences⁹², 2022 was marked by the return to physical meetings after the restrictions caused by the COVID-19 pandemic, with Members of the Commission participating in:

- the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)⁹³;
- the European Parliamentary Week⁹⁴;
- the Joint Parliamentary Scrutiny Group on Europol⁹⁵;
- various interparliamentary conferences (IPCs)⁹⁶ and committee meetings (ICMs)⁹⁷.

The first regular COSAC Chairpersons' meetings of the year, held on 13-14 January in the French *Sénat* in hybrid mode, launched a reflection process by national Parliaments in two working groups: one on the role of national Parliaments in the EU, and the other on European values and the rule of law.

The LXVII COSAC plenary meeting, held in Paris on 3-5 March under the shadow of the unfolding Russian war of aggression against Ukraine, covered the priorities of the French Presidency, the recovery plan for Europe, climate change and energy transition, and the Conference on the Future of Europe, with a debate on Ukraine dominating the agenda. The Commission, through the video message from President von der Leyen and a keynote speech by the Conference on the Future of Europe's co-chair Vice-President Šuica, underlined the importance of the Conference on the Future of Europe as an unprecedented democratic experiment and the crucial role of national Parliaments in it. All delegations co-signed the statement in support of Ukraine prepared by the COSAC Troika, which called for respect for the sovereignty and territorial integrity of all states, including Georgia and Moldova.

The Chairpersons' meeting on 10-11 July in the Czech *Senát* continued the discussion on the war in Ukraine and, linked to it, energy security and inflation. It devoted particular attention to the

⁹² For more details, 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>.

⁹³ 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 EU). For more information, see <https://secure.ipex.eu/IPEXL-WEB/conferences/cosac>.

⁹⁴ The European Parliamentary Week brings together parliamentarians from EU, candidate and observer countries to discuss economic, budgetary, environmental and social matters. In 2022, it was titled 'EU economic governance from a parliamentary perspective' and was held on 15-16 March with a plenary session, at which President von der Leyen delivered a key intervention by video message, a plenary on EU own resources, a plenary on the reform of the stability and growth pact (for which Commissioner Gentiloni delivered introductory remarks) and a high-level conference on the Recovery and Resilience Facility.

⁹⁵ It held its 10th and 11th meetings on 28 February in Paris and on 25 October in Brussels. Both were attended by Commissioner Johansson.

⁹⁶ IPC on the strategic economic autonomy of the European Union, attended by Commissioner Breton (14 March); IPC for the common foreign and security policy and the common security and defence policy, attended by the High Representative/Vice-President Borrell (5 September); IPC on Stability, Economic Coordination and Governance in the EU, attended by Executive Vice-President Dombrovskis (11 October).

⁹⁷ ICM on International Women's Day 2022 on 'An ambitious future for Europe's women after COVID-19 – Mental load, gender equality in teleworking and unpaid care work after the pandemic', attended by Vice-President Jourová and Commissioner Dalli (3 March); ICM on the first results of the Conference on the Future of Europe, attended by Vice-President Šuica (17 May); ICM on EU enlargement policy in the aftermath of Russia's invasion of Ukraine, attended by Commissioner Várhelyi (27 June); ICM on the rights of Ukrainian women fleeing the war, attended by Commissioner Schmit (12 July); ICM on the conclusions of the Conference on the Future of Europe and the role of national Parliaments in the EU, attended by Vice-President Šuica (26 October); ICM on 'Evaluation of Eurojust's activities', attended by Commissioner Reynders (30 November); ICM on 'The situation of the rule of law in the EU', attended by Commissioner Reynders (1 December).

need to strengthen the resilience of democracies in Europe against foreign interference and internal threats, and to discussing media and democracy with Vice-President Jourová.

The LXVIII COSAC plenary meeting, held in Prague on 13-15 November, saw a more geopolitical debate focusing on the strategic autonomy of the EU, support for Ukraine and the European perspective for the Western Balkans and Eastern Partnership countries, with the participation of Vice-Presidents Jourová and Šefčovič. In her introductory video message, President von der Leyen highlighted the importance of the voice of national parliamentarians in building coalitions for positive change in many areas in these turbulent times.

During the second plenary meeting of 2022, COSAC adopted conclusions and a contribution, returning to this practice after a 2-year break. The conclusions acknowledged the usefulness of informal videoconferences between COSAC delegates and members of the European Commission, in enabling timely and detailed discussions on concrete European initiatives. Three such exchanges were held in 2022⁹⁸, all in the second half of the year, as in the first half COSAC concentrated on conducting the discussion in its working groups.

The contribution⁹⁹ referred to the two COSAC working groups created under the French Presidency. The working group on the role of national Parliaments put forward several suggestions for strengthening the subsidiarity control system and for their earlier and broader involvement in the policy cycle. Proposed measures include: the organisation of ad hoc interparliamentary conferences prior to presentation of main legislative texts or packages by the Commission; increased participation of Members of the Commission, Members of the European Parliament or Ministers of the Member State chairing the Council in the work of COSAC; and giving the Chairpersons of the European affairs committees of national Parliaments and COSAC the right to put written questions to the Commission (similar to the right the European Parliament has under Article 230 of the Treaty on the Functioning of the EU). These suggestions could be implemented through existing channels as part of the political dialogue with the Commission. However, the Treaties would have to be reformed for others, such as introducing a collective right of indirect initiative for national Parliaments, lowering the threshold for a ‘yellow card’ or extending the deadline for reasoned opinions¹⁰⁰. The second working group recommended promoting a better understanding of the concepts of European values and the rule of law and ensuring better monitoring, including through the national Parliaments, of how these are respected.

In its reply¹⁰¹ to the COSAC contribution, the Commission reiterated its readiness to strengthen the dialogue with national Parliaments through the established channels of communication and cooperation to facilitate their input to and feedback on the Commission’s political and legislative initiatives.

Some of the suggestions made by the working groups of the COSAC mirrored suggestions in the final report of the Conference on the Future of Europe of 9 May 2022. They included reforming the subsidiarity control mechanism, introducing the possibility for national Parliaments (and regional Parliaments with legislative powers) to suggest a legislative initiative at the European

⁹⁸ On 6 October with Vice-President Vestager on the single market emergency instrument, on 27 October with Vice-President Jourová on the Rule of Law Report and the Media Freedom Act, and on 24 November with Vice-President Šefčovič on EU-UK relations, in particular as regards the Northern Ireland protocol.

⁹⁹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2022.475.01.0001.01.ENG

¹⁰⁰ See footnote 51 for the current thresholds.

¹⁰¹ <https://secure.ipex.eu/IPEXL-WEB/download/file/8a8629a88625192f0186270a85610010/Letter%20from%20VP%20Sefcovic.pdf> and <https://secure.ipex.eu/IPEXL-WEB/download/file/8a8629a88625192f0186270b8cca0011/Annex%20-%20Reply%20to%20the%20LXVIII%20COSAC%20Contribution.pdf> (available only in English).

level, and establishing contact at an earlier stage between the Commission and national Parliaments.

In 2022, the Finnish *Eduskunta* organised a first World Summit of the Committees of the Future on 12-13 October¹⁰², with a view to opening a new interparliamentary forum for discussion on future policy¹⁰³. One of the recommendations in the Interparliamentary Union's (IPU) 2022 global parliamentary report to Parliaments was to become future-focused and to lead public debate about the future¹⁰⁴.

Through 2022, in interparliamentary fora, national Parliaments focused on (i) the geopolitical situation and challenges caused by the war and the need to increase the resilience of European democracy, and (ii) an in-depth reflection on their own role in European decision-making in the COSAC working groups and the process of the Conference on the Future of Europe. In addition, a new global forum for interparliamentary dialogue on future policy emerged, creating an opportunity for national Parliaments in the EU to develop foresight capacities and become proactive on topics decisive for the future.

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.

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)¹⁰⁵. The Committee of Regions also participates, through the RegHub network, in the 'Fit for Future' platform, which helps the Commission to simplify EU laws and reduce burden as part of its better regulation work¹⁰⁶.

While there is no explicit provision made in the Treaties for direct interaction between the Commission and regional Parliaments, the Commission takes their contributions into account and replies to them. An increasing number of regional Parliaments¹⁰⁷ submitted an increasing number of resolutions directly to the Commission: 74 resolutions in 2022, compared to 50 in

¹⁰² <https://www.eduskunta.fi/EN/valiokunnat/tulevaisuusvaliokunta/Pages/The-World-Summit-of-the-Committees-of-the-Future.aspx>

¹⁰³ Among the topics discussed were the role of technology in achieving more environmentally friendly and equal development, the need for transnational regulation of digital business and the use of algorithms, and the importance of parliamentary cooperation in proactive decision-making.

¹⁰⁴ <https://www.ipu.org/impact/democracy-and-strong-parliaments/global-parliamentary-report/global-parliamentary-report-2022-public-engagement-in-work-parliament>

¹⁰⁵ <http://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>. For more details on Committee of the Regions' subsidiarity control activities, see Section 2.4.

¹⁰⁶ For more details on 'Fit for Future' and 'RegHub', see Sections 2.1 and 2.4.

¹⁰⁷ The regional Parliaments of: Flanders, Wallonia, the Brussels Capital Region and the German-speaking Community of Belgium (Belgium); Bavaria, Thuringia and Baden-Württemberg (Germany); the Balearic Islands, the Basque Country, Extremadura and Navarre (Spain); Emilia-Romagna and the Aosta Valley (Italy); Upper Austria (Austria); Subcarpathia (Poland), and: the Interregional Parliamentarians Council [Saarland and Rhineland-Palatinate (Germany); Grand Est (France); Luxembourg (Luxembourg); Wallonia, Federation Wallonie-Bruxelles and the German-speaking Community of Belgium (Belgium)]. The regional Parliament of Bavaria produced over 50% of those resolutions (37). Other particularly active regional Parliaments were those from the Balearic Islands (11 resolutions), the Basque Country (6 resolutions) and Thuringia (4 resolutions).

2021 and 33 in 2020. These concerned various topics and initiatives, such as cohesion policy and regional issues, the Conference on the Future of Europe, Russia's war of aggression against Ukraine and human rights. Some contributions focused on specific Commission communications¹⁰⁸ and legislative packages or proposals¹⁰⁹, with five of them expressing subsidiarity concerns¹¹⁰. In addition to opinions, regional Parliaments participated in the 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 Commission¹¹¹. One regional Parliament used another channel, submitting six opinions through its national Parliament¹¹². In addition to written exchanges, Members of the Commission also hold meetings with regional Parliaments¹¹³.

7. CONCLUSION

Overall, there was little change, compared to previous years, in the intensity of national Parliaments' monitoring of respect for the principles of subsidiarity and proportionality – to ensure that EU action is taken only when necessary and only to the extent necessary – and their relations with the Commission with an active written and oral dialogue.

For instance, the total number of opinions (including reasoned opinions) remained stable (355 in 2022 compared to 360 in 2021), while the number of opinions continued to vary significantly from one national Parliament to another. The 10 most active chambers issued an identical

¹⁰⁸ 'European Strategy for Universities' (COM(2022) 16 final), 'Sustainable Carbon Cycles' (COM(2021) 800 final), 'New EU Urban Mobility Framework' (COM(2021) 811 final), 'REPowerEU Plan' (COM(2022) 230 final), '2022 EU Justice Scoreboard' (COM(2022) 234 final), 'EU Solar Energy Strategy' (COM(2022) 221 final), European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe'.

¹⁰⁹ Transparency and political advertising (COM(2021) 731 final), combating antisemitism (COM(2021) 615 final), European higher education cooperation (COM(2022) 17 final), building a trans-European transport network (COM(2021) 812 final), operational police cooperation (COM(2021) 780 final), industrial emissions and landfill of waste (COM(2022) 156 final), preventing and combating child sexual abuse (COM(2022) 209 final), the sustainable use of plant protection products (COM(2022) 305 final), the European Media Freedom Act (COM(2022) 457 final), a coordinated approach by the Union to strengthen the resilience of critical infrastructure (COM(2022) 551 final).

¹¹⁰ The regional Parliament of Bavaria on the proposal for a Council Directive on the right to vote and to stand as a candidate in municipal elections by citizens of the Union (COM(2021) 733 final), the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law (COM(2021) 851 final) and the proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance on limiting the deductibility of interest for corporate income tax purposes (COM(2022) 216 final) and on the proposal for a European Media Freedom Act (COM(2022) 457 final), on the latter also the regional Parliament of Thuringia.

¹¹¹ The regional Parliament of Bavaria submitted contributions for more than 20 public consultations for initiatives under a variety of policies.

¹¹² The Flemish Parliament submitted opinions on the 'LGBTIQ Equality Strategy 2020-2025' (COM(2020) 698 final), a proposal for a Regulation on Eurojust as regards evidence relating to genocide, crimes against humanity and war crimes, the '2022 European Semester – Spring Package' (COM(2022) 600 final) and three own-initiative opinions on: the referenda in Ukraine, the death of Masha Amini and the human rights situation in Iran, and the humanitarian crisis in the Horn of Africa. According to Declaration 51 to the Treaties, the Flemish Parliament is a component of the Belgian national parliamentary system. Pursuant to a 2017 cooperation agreement between the national and regional Parliaments of Belgium, opinions of regional Parliaments are transmitted through the secretariat of the Conference of Presidents of Parliamentary Assemblies, with an address at the Belgian *Sénat/Senaat*. Therefore, the Commission registered them technically as opinions from the Belgian *Sénat/Senaat* and replied through the latter.

¹¹³ In 2022, Commissioner Várhelyi met the regional Parliament of Flanders (Belgium, 11 May 2022) for an exchange of views on EU's neighbourhood and enlargement policy.

percentage of opinions as in 2021 (79%), while the number of chambers issuing opinions increased by one chamber. Generally speaking, national Parliaments which have traditionally focused on verification of proposals' compliance with the principles of subsidiarity and proportionality continued to do so in 2022. Overall, national Parliaments focused their opinions more on proposals subject to subsidiarity control than on communications or on own-initiative opinions, a trend typical for the years in a Commission term of office with a high number of legislative proposals. The level of participation in public consultations remained insignificant.

The developments in 2022 regarding the scrutiny of respect for subsidiarity led to the following noteworthy conclusions.

- National Parliaments issued most reasoned opinions on a legislative proposal from the European Parliament to reform the European electoral law. Since 2017, no individual proposal had received as many reasoned opinions (5) accounting for as many votes (8), although this number was still well short of the threshold for an obligatory review of the draft legislative act ('yellow card').
- Overall, the number of reasoned opinions (32) arguing non-compliance with the principle of subsidiarity doubled in 2022 compared to the previous year. While that number remained considerably below the previous peaks, such an increase had not occurred since 2016. However, a number of them were not grounded on clear-cut criticism of a subsidiarity breach but rather on a perceived lack of analysis of national circumstances.
- More than 40% of reasoned opinions originated from one single national Parliament: the Swedish *Riksdag*. This high percentage had already happened in the past, but not in the last few years.

Compared to the two previous Commission terms of office, the first three years of the von der Leyen Commission show a clear decrease in the overall number of opinions and in the number of reasoned opinions that raised subsidiarity concerns from national Parliaments.

As regards relations between the Commission and regional Parliaments, 2022 saw a considerable increase in the number of their contributions (72) compared to the previous 2 years (50 in 2021 and 33 in 2020), mainly due to the high activity of a very limited number of regional Parliaments.

Even after COVID-19 restrictions had been lifted in 2022 and most meetings were once again being held in person, virtual formats were maintained for practical reasons for selected events, such as extraordinary meetings of the COSAC Chairpersons with members of the Commission.

In 2022, national Parliaments suggested ways to increase their influence in the EU through earlier and wider involvement in the policy cycle. These suggestions came in the conclusions of a dedicated COSAC working group and a plenary contribution¹¹⁴, and were also reflected in the Conference on the Future of Europe final report. While some suggestions would require Treaty change, the Commission reiterated its readiness to strengthen the dialogue with the national Parliaments through the established channels of communication and cooperation to facilitate their input to and feedback on the Commission's political and legislative initiatives.

¹¹⁴ See footnotes 99 and 101 for the COSAC contribution and the Commission's reply.



Brussels, 12.10.2023
COM(2023) 640 final

ANNEXES 1 to 3

ANNEXES

to the

REPORT FROM THE COMMISSION

ANNUAL REPORT 2022

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

ANNEX 1

List of draft legislative acts on which national Parliaments issued reasoned opinions¹ in 2022 regarding compliance with the subsidiarity principle

| Document | Title | Number of reasoned opinions (Protocol No 2) | Number of votes (Protocol No 2) ² | National chamber submitting reasoned opinions |
|--|--|---|--|---|
| 1 2020/2220 (INL) [Draft legislative act presented by the European Parliament] | Proposal for a Council Regulation on the election of the Members of the European Parliament by direct universal suffrage, repealing Council Decision 76/787/ECSC, EEC, Euratom and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision | 5 | 8 | SE <i>Riksdag</i> (2 votes) DK <i>Folketing</i> (2 votes) NL <i>Eerste Kamer</i> (1 vote) NL <i>Tweede Kamer</i> (1 vote) IE <i>Dáil</i> and IE <i>Seanad Éireann</i> jointly (2 votes) |
| 2 COM(2022) 457 final | Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU | 4 | 6 | FR <i>Sénat</i> (1 vote) DK <i>Folketing</i> (2 votes) HU <i>Országgyűlés</i> (2 votes) DE <i>Bundesrat</i> (1 vote) |
| 3 COM(2021) 803 final COM(2021) 804 final | Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen and Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) | 2 ³ | 2 2 | CZ <i>Poslanecká sněmovna</i> (1 vote) CZ <i>Senát</i> (1 vote) CZ <i>Poslanecká sněmovna</i> (1 vote) CZ <i>Senát</i> (1 vote) |
| 4 COM(2021) 565 final | Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 5 COM(2021) 570 final | Proposal for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union | 1 | 2 | SE <i>Riksdag</i> (2 votes) |

¹ For an explanation of the nature of reasoned opinions, see footnote 44 of the main report.

² For an explanation of the votes under the subsidiarity scrutiny, see footnote 53 of the main report.

³ Both Czech Chambers issued one opinion each covering both COM(2021) 803 final and COM(2021) 804 final.

| | Document | Title | Number of reasoned opinions (Protocol No 2) | Number of votes (Protocol No 2)² | National chamber submitting reasoned opinions |
|----|---------------------|---|--|--|--|
| 6 | COM(2021) 706 final | Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 7 | COM(2021) 753 final | Proposal for a Regulation of the European Parliament and of the Council on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 8 | COM(2021) 762 final | Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 9 | COM(2021) 802 final | Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast) | 1 | 2 | FI <i>Eduskunta</i> (2 votes) |
| 10 | COM(2021) 805 final | Proposal for a Regulation of the European Parliament and of the Council on methane emissions reduction in the energy sector and amending Regulation (EU) 2019/942 | 1 | 1 | CZ <i>Poslanecká sněmovna</i> (1 vote) |
| 11 | COM(2021) 812 final | Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, amending Regulation (EU) 2021/1153 and Regulation (EU) No 913/2010 and repealing Regulation (EU) 1315/2013 | 1 | 1 | FR <i>Sénat</i> (1 vote) |
| 12 | COM(2021) 823 final | Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 13 | COM(2021) 851 final | Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC | 1 | 2 | SE <i>Riksdag</i> (2 votes) |

| | Document | Title | Number of reasoned opinions (Protocol No 2) | Number of votes (Protocol No 2)² | National chamber submitting reasoned opinions |
|----|---------------------|---|--|--|--|
| 14 | COM(2022) 71 final | Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 15 | COM(2022) 105 final | Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence | 1 | 1 | CZ <i>Poslanecká sněmovna</i> (1 vote) |
| 16 | COM(2022) 150 final | Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 | 1 | 2 | BG <i>Narodno Sabranie</i> (2 votes) |
| 17 | COM(2022) 156 final | Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste | 1 | 1 | CZ <i>Poslanecká sněmovna</i> (1 vote) |
| 18 | COM(2022) 177 final | Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) | 1 | 1 | FR <i>Sénat</i> (1 vote) |
| 19 | COM(2022) 216 final | Proposal for a Council Directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 20 | COM(2022) 222 final | Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency | 1 | 1 | FR <i>Sénat</i> (1 vote) |

| | Document | Title | Number of reasoned opinions (Protocol No 2) | Number of votes (Protocol No 2)² | National chamber submitting reasoned opinions |
|---|---------------------|--|--|--|--|
| 21 | COM(2022) 304 final | Proposal for a Regulation of the European Parliament and of the Council on nature restoration | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 22 | COM(2022) 305 final | Proposal for a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115 | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 23 | COM(2022) 349 final | Proposal for a Regulation of the European Parliament and of the Council on establishing the European defence industry Reinforcement through common Procurement Act | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| 24 | COM(2022) 459 final | Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98 | 1 | 2 | SE <i>Riksdag</i> (2 votes) |
| TOTAL number of reasoned opinions received | | | 32 | | |

ANNEX 2

Number of opinions received by the Commission in 2022 per national Parliament/Chamber (political dialogue and subsidiarity control mechanism)

| Member State | Chamber | Total number of opinions ⁴ | Number of which were reasoned opinions (Protocol No 2) |
|--------------|---|---------------------------------------|--|
| Czechia | <i>Senát</i> | 58 | 1 |
| Spain | <i>Las Cortes Generales: Senado de España and Congreso de los Diputados</i> | 46 | 0 |
| Romania | <i>Camera Deputaţilor</i> | 33 | 0 |
| Czechia | <i>Poslanecká sněmovna</i> | 30 | 4 |
| Germany | <i>Bundesrat</i> | 30 | 1 |
| Portugal | <i>Assembleia da República</i> | 19 | 0 |
| Sweden | <i>Riksdagen</i> | 18 | 14 |
| Romania | <i>Senat</i> | 17 | 0 |
| France | <i>Sénat</i> | 15 | 4 |
| Italy | <i>Camera dei Deputati</i> | 13 | 0 |
| Netherlands | <i>Eerste Kamer</i> | 10 | 1 |
| France | <i>Assemblée nationale</i> | 8 | 0 |
| Belgium | <i>Sénat de Belgique / Belgische Senaat</i> | 6 | 0 |
| Hungary | <i>Országgyűlés</i> | 6 | 1 |
| Italy | <i>Senato della Repubblica</i> | 5 | 0 |
| Austria | <i>Bundesrat</i> | 5 | 0 |
| Denmark | <i>Folketinget</i> | 4 | 2 |
| Ireland | Houses of the Oireachtas: <i>Dáil and Seanad Éireann</i> | 4 | 1 |
| Netherlands | <i>Tweede Kamer</i> | 4 | 1 |
| Poland | <i>Sejm</i> | 4 | 0 |
| Poland | <i>Senat</i> | 4 | 0 |
| Slovakia | <i>Národná rada</i> | 4 | 0 |
| Bulgaria | <i>Narodno Sabranie</i> | 2 | 1 |
| Croatia | <i>Hrvatski Sabor</i> | 2 | 0 |
| Austria | <i>Nationalrat</i> | 2 | 0 |
| Finland | <i>Eduskunta</i> | 2 | 1 |
| Germany | <i>Bundestag</i> | 1 | 0 |
| Lithuania | <i>Seimas</i> | 1 | 0 |
| Luxembourg | <i>Chambre des Députés</i> | 1 | 0 |
| Slovenia | <i>Državni svet</i> | 1 | 0 |

⁴ Including both opinions under the ‘political dialogue’ and reasoned opinions received from national Parliaments.

| Member State | Chamber | Total number of opinions⁴ | Number of which were reasoned opinions (Protocol No 2) |
|---------------------|--|---|---|
| Belgium | <i>Chambre des Représentants de Belgique / Belgische Kamer van volksvertegenwoordigers</i> | 0 | 0 |
| Estonia | <i>Riigikogu</i> | 0 | 0 |
| Greece | <i>Vouli ton Ellinon</i> | 0 | 0 |
| Cyprus | <i>Vouli ton Antiprosopon</i> | 0 | 0 |
| Latvia | <i>Saeima</i> | 0 | 0 |
| Malta | <i>Kamra tad-Deputati</i> | 0 | 0 |
| Slovenia | <i>Državni zbor</i> | 0 | 0 |
| TOTAL | | 355 | 32 |

ANNEX 3

Documents generating the highest number of opinions⁵ received by the Commission in 2022 (political dialogue and subsidiarity control mechanism)

| Document | Title | Total number of opinions ⁶ | Number of which were reasoned opinions (Protocol 2) |
|----------|--|---------------------------------------|---|
| 1 | COM(2022) 457 final | 12 ⁷ | 4 |
| 2 | COM(2022) 305 final | 9 | 1 |
| 3 | COM(2021) 762 final | 8 | 1 |
| 4 | 2020/2220 (INL) <i>[Draft legislative act presented by the European Parliament]</i> | 8 | 5 |
| 5 | COM(2021) 812 final | 6 | 1 |
| 6 | COM(2021) 811 final | 5 | 0 |
| 7 | COM(2021) 645 final | 5 | 0 |

⁵ The table ranks all documents for which at least five opinions were received.

⁶ Including opinions under the ‘political dialogue’ and reasoned opinions received from national Parliaments.

⁷ The proposal for a European Media Freedom Act triggered 4 reasoned opinions plus 8 opinions in the framework of the political dialogue, including one own-initiative opinion ahead of the publication of the proposal.

| Document | | Title | Total number of opinions⁶ | Number of which were reasoned opinions (Protocol 2) |
|-----------------|---------------------|---|---|--|
| 8 | COM(2021) 802 final | Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast) | 5 | 1 |
| 9 | COM(2021) 851 final | Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC | 5 | 1 |
| 10 | COM(2021) 890 final | Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum | 5 | 0 |
| 11 | COM(2021) 891 final | Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders | 5 | 0 |
| 12 | COM(2022) 209 final | Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse | 5 | 0 |
| 13 | COM(2022) 304 final | Proposal for a Regulation of the European Parliament and of the Council on nature restoration | 5 | 1 |