EUROPEAN
COMMISSION

Brussels, 11.7.2019
COM(2019) 333 final

REPORT FROM THE COMMISSION

ANNUAL REPORT 2018
ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY AND ON RELATIONS WITH NATIONAL PARLIAMENTS

ANNUAL REPORT 2018
ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY AND ON RELATIONS WITH NATIONAL PARLIAMENTS

1. INTRODUCTION

Each year the Commission submits, in line with Article 9 of Protocol No 2 to the Treaty on European Union and to the Treaty on the Functioning of the European Union, an annual report on the application of the principles of subsidiarity and proportionality in European Union law-making. Since 2005, the Commission has also decided to publish an annual report on its relations with national Parliaments. Given the important role that national Parliaments play in applying the principles of subsidiarity and proportionality, the Commission has decided to merge the two reports. This new approach will give more prominence to the views of national Parliaments and avoid overlaps between the two annual reports. This 26th report on the application of the principles of subsidiarity and proportionality therefore also covers the relations between the Commission and national Parliaments.

As regards the application of the principles of subsidiarity and proportionality, the most noteworthy development in 2018 was the work of the Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently' ('the Task Force'), set up by President Juncker and chaired by First Vice-President Timmermans. Its findings gave new momentum to interinstitutional reflection and to concrete actions to ensure that Union legislation is developed and implemented in line with the principles of subsidiarity and proportionality. The number of reasoned opinions continued the fall seen in the previous two years and no single Commission proposal received reasoned opinions from more than four national Parliaments, which is far below the threshold for triggering a 'yellow card'.

In general, relations with national Parliaments continued to be intensive and fruitful in 2018. The opinions issued both as part of the Commission's political dialogue with national Parliaments and under the subsidiarity early warning system cover a wide range of policies and issues. The number of opinions submitted in the political dialogue remained at the same high level in 2018 as in 2017, although a few very active chambers accounted for the vast majority of opinions. Conversely, the number of national Parliaments not issuing any opinions has risen to eight (ten chambers) in 2018. At the same time, round one third of all opinions received by the Commission concerned proposals that are not subject to subsidiarity scrutiny[1], including a number of own-initiative opinions not related to any specific Commission proposal.

This shows that the vast majority of national Parliaments have a continued interest in actively engaging with the Commission on its initiatives, including at an early but forward-looking stage of the policy cycle, for example on the next multiannual financial framework or on deepening the Economic and Monetary Union. This intensive exchange is also marked by the high number of visits that Commissioners make to national Parliaments and vice versa.

[1] Such as legislative proposals in areas where the Union has exclusive competence or Communications and White Papers.

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

2.1. The Commission

The Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' and the follow-up to its recommendations

On 12 September 2017 President Juncker announced in his State of the Union address the creation of a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'. With First Vice-President Timmermans acting as the chair, the Task Force's six members[2] met seven times between January and July 2018 to discuss the tasks presented by President Juncker in his decision establishing the Task Force:

- How to better apply the principles of subsidiarity and proportionality in the work of the Union's institutions, particularly in its legislative work.
- How to identify any policy areas where, over time, decision-making and/or implementation could be re-delegated in whole or in part or definitively handed back to the Member States.
- How to better involve regional and local authorities in preparing and following up Union policies.

Based on those discussions, on a public hearing and on the inputs provided by numerous stakeholders, the Task Force made nine recommendations in its report delivered to President Juncker on 10 July 2018[3]. The main recommendations were:

- A new way of working is needed to make better laws based on a common understanding of subsidiarity and proportionality.
- 'Active subsidiarity' is needed to give a stronger voice to local and regional authorities and to national Parliaments to promote ownership of what the Union does.
- The Union should use its resources more efficiently and prioritise its actions but there are no reasons to re-delegate Treaty competences or entire policy areas back to the Member States.

In its Communication 'The principles of subsidiarity and proportionality: strengthening their role in the EU's policymaking'[4], adopted on 23 October 2018, the Commission set out in broad terms its response to the Task Force. It also called on the other institutions, consultative bodies, national Parliaments and others to consider how they will respond to the Task Force's recommendations.

The Commission will:

---

[2] Three members from national Parliaments, Mr Lopatka (Austria), Mr Vigenin (Bulgaria) and Mr Vitsut (Estonia), and three members from the Committee of the Regions, Mr Lambertz (Belgium), Mr Schneider (Germany) and Mr Decoster (France). The European Parliament did not take up the Commission's invitation to be involved in the Task Force.

[3] https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en

[4] COM(2018) 703.

- Present assessments of subsidiarity and proportionality in a standard structured way, using the common assessment grid proposed by the Task Force. This will produce its full benefits if the European Parliament, the Council and national Parliaments do the same.
- Target the views of local and regional authorities better in consultations and evaluations because their first-hand experience of implementing the European Union's legislation is essential.
- Look more closely at existing legislation from the point of view of subsidiarity, proportionality, and the role of local and regional authorities. This includes delegated and implementing acts.
- Help national Parliaments to execute their role more effectively by discounting, in agreement with the European Parliament and the Council, the Christmas/New Year holiday period from the eight-week period during which they can send reasoned opinions.
- Produce aggregate responses where four or more national Parliaments issue reasoned opinions on a Commission legislative proposal but where their number falls short of the threshold required to trigger a 'yellow card'. This will give more prominence to the opinions of national Parliaments and a comprehensive picture of the concerns raised as well as the Commission's considerations, which will also be made available to the public and the co-legislators.

In its Communication of 15 April 2019 on the stock-taking of the better regulation agenda[5], the Commission set out the actions it plans to take to prepare its legislative proposals.

On 15-16 November 2018, First Vice-President Timmermans presented the Commission's approach in a conference on 'Subsidiarity as a building principle of the European Union' organised in Bregenz by the Austrian Presidency.

On 20 December 2018, the Commission received from the Polish *Senat*, in the framework of the political dialogue, a first opinion on its Communication of 23 October. The *Senat* expressed support for the Commission's intentions while requesting a further strengthening of the national Parliaments' role at the next revision of the treaties[6].

Better Regulation - subsidiarity and proportionality analysis

In 2018, the Commission continued to apply its reinforced Better Regulation agenda and to integrate the principles of subsidiarity and proportionality at all stages of its policymaking based on improved guidance published in 2017. The 'Have Your Say' web- portal[7] was further improved to provide a single point of access for citizens and interested parties to participate in the Commission's policy preparation. The Commission also continued to evaluate existing laws and policy frameworks, before presenting proposals to revise them. These evaluations include assessments of whether existing policy measures are still 'fit for purpose' and to what extent they comply with the principles of subsidiarity and proportionality.

---

5 COM(2019) 178.

6 Further, generally supportive, opinions were received from other chambers in the first quarter of 2019.

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

The Commission website 'Lighten the load — Have your say'[8] and the Regulatory Fitness and Performance (REFIT) Platform[9] provide ways for the public and stakeholders to communicate with the Commission on possible excessive burdens or inefficiencies of existing Union legislation, which may also concern aspects of subsidiarity or proportionality. In 2018, the REFIT Platform produced 20 opinions with recommendations to the Commission on how to simplify and reduce the regulatory burdens of existing Union's legislation[10]. The Commission is responding to these recommendations notably through the implementation of its Work Programmes.

The Better Regulation guidelines and the accompanying 'toolbox'[11] require the Commission to carry out a subsidiarity analysis when considering a new initiative in areas where the Union does not have exclusive competence, and when evaluating the relevance and European added value of an existing intervention. The Commission analyses subsidiarity for both legislative and non-legislative initiatives.

The objective of the analysis is to assess:

1. whether action at national, regional or local level is sufficient to achieve the objective pursued; and

2. whether Union action would provide added value compared to action by the Member States.

Under the principle of proportionality, the content and form of Union action must not exceed what is necessary to meet the objectives of the Treaties. Respect for the principle of proportionality is about ensuring that the approach and degree of regulatory intervention matches its objective. All impact assessments, evaluations and fitness checks should clearly analyse the application of the principle of proportionality.

Impact assessments

In 2018, the Regulatory Scrutiny Board[12] ('the Board') scrutinised 75 impact assessments and issued an opinion[13] on each of these cases. In 16 cases the analysis of subsidiarity and European added value needed to be improved, while 47 opinions contained comments aimed at improving the analysis of proportionality and the comparison of policy options. The following examples illustrate how the Board assessed subsidiarity and proportionality in 2018 and helped the Commission to improve its analysis of how proposals comply with these principles:

---

8 https://ec.europa.eu/info/law/better-regulation/lighten-load_en

9 https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/refit-platform-work-progress_en. Since its inception in 2015, the REFIT platform has produced 89 recommendations.

10 http://ec.europa.eu/smart-regulation/refit/simplification/consultation/contributions_en.htm

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

12 The Regulatory Scrutiny Board consists of a Chair (Director-General level) and six full-time members, of which three are recruited from outside the Commission. All members of the Board are independent and function in a personal capacity based on their individual expertise. The Board reviews the quality of impact assessments, fitness checks and major evaluations. Subsidiarity and proportionality are part of this quality check. https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en.

13 The opinions are published along with the impact assessments, when the initiatives are adopted by the Commission.

- Following the Board's scrutiny, the **scope** of the Commission's proposal on **unfair trading practices** was **narrowed** to asymmetrical bargaining relationships with small and medium sized enterprises (SMEs) rather than to the whole **food supply chain**[14].
- In its positive opinion with reservations on **illegal online content**[15], the Board questioned the proportionality of the envisaged policy options arguing that these were not consistent with the scope of the intervention. The latter focused on terrorist online content but the baseline and the policy options did not properly reflect that focus. The impact assessment also needed to better reflect why additional action on terrorist content was more urgent than for other illegal content. As a result, the impact assessment was revised and the **policy options adapted to ensure better focus and more detailed content**.
- In its negative opinion on **whistleblower protection**[16], the Board questioned the impact assessment's analysis of subsidiarity and asked that it be improved. Following this, the revised impact assessment developed the rationale for European Union action in the absence of sufficient national or existing European laws on whistleblowing. The **cross-border dimension was highlighted and illustrated better**, thus showing the need for action at the level of the European Union.
- In the case of the **Digital Europe Programme**[17]**,** which is part of the 2021-2027 multi-annual financial framework, the Board considered that the impact assessment should have better accounted for Member States' commitments to co-invest and to contribute assets to a joint infrastructure at the European level. The impact assessment should also have better identified the request of Member States, the research community, and the private sector to coordinate their research and training activities. It should have shown how the spending programme would help to cover this request. Responding to the Board's concerns, the **section on Member State engagement** in the revised impact assessment was **extended and re-organised to correspond with the five parts of the programme**.

Evaluations and fitness checks

Subsidiarity and proportionality were essential elements in the retrospective evaluations and fitness checks that assess whether European actions are delivering the expected results in terms of efficiency, effectiveness, coherence, relevance and European value added. In 2018, the Commission finalised some 70 evaluations, including three fitness checks (evaluations of broader policy areas). The three fitness checks concerned maritime affairs, legal migration and chemical legislation (excluding REACH).

The Regulatory Scrutiny Board scrutinised 10 major evaluations and fitness checks in 2018. It made recommendations for improvements under the category of 'relevance and EU value added/subsidiarity' in seven cases, including on legal migration, on fisheries and maritime affairs, on greening of the Common Agricultural Policy and on the European Union's strategy on

[14] http://ec.europa.eu/transparency/regdoc/rep/2/2018/EN/SEC-2018-182-3-EN-MAIN-PART-1.PDF
[15] http://ec.europa.eu/transparency/regdoc/rep/2/2018/EN/SEC-2018-397-F1-EN-MAIN-PART-1.PDF
[16] http://ec.europa.eu/transparency/regdoc/rep/2/2018/EN/SEC-2018-198-3-EN-MAIN-PART-1.PDF
[17] http://ec.europa.eu/transparency/regdoc/rep/2/2018/EN/SEC-2018-289-1-EN-MAIN-PART-1.PDF

adaptation to climate change. This scrutiny helped to improve the Commission's analysis in evaluations and fitness checks of the subsidiarity and proportionality principles[18].

2.2. The European Parliament

In 2018, the European Parliament formally received 473 submissions by national Parliaments under Protocol No 2 on the application of the principles of subsidiarity and proportionality[19]. 46 of these were reasoned opinions while the other 427 were contributions (submissions not raising issues on subsidiarity compliance). In comparison, 49 reasoned opinions and 372 contributions were officially transmitted to the European Parliament in 2017. The ratio of reasoned opinions to contributions remains low, indicating that national Parliaments do not see subsidiarity control as a means of stalling the European Union's law-making process, but rather as a way of voicing their views and concerns[20].

Under Annex V to the European Parliament's Rules of Procedure, it is the Committee on Legal Affairs (JURI) that has horizontal responsibility for ensuring compliance with the principle of subsidiarity. Every six months a Member of the JURI Committee is appointed as standing rapporteur for subsidiarity based on a rotation among the political groups. Sajjad Karim (European Conservatives and Reformists) was the standing rapporteur during the first half of 2018, followed by Gilles Lebreton (Europe of Nations and Freedom) for the second half of the year. The reasoned opinions received and confirmed as such by the Committee are included for information in the agenda of the first available meeting of the JURI Committee.

The JURI Committee also regularly draws up a report on the Commission's Annual Report on subsidiarity and proportionality. Exceptionally, the latest report on the Annual Report on subsidiarity and proportionality covered both 2015 and 2016. This report by Mady Delvaux (Socialists & Democrats) was adopted by the Plenary on 18 April 2018[21].

The JURI Committee also contributes to the bi-annual reports by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC)[22] on questions related to subsidiarity and proportionality. In particular, answering to COSAC's 29th Bi-annual Report and in the light of its resolution of 17 May 2017, the JURI Committee reaffirmed that in a possible review of the Treaties, the process of checking subsidiarity could be improved in order to be more effective[23]. For instance, consideration could be given to whether reasoned opinions should be limited to examining subsidiarity grounds or whether they should also include proportionality assessments, and what the effect should be in cases where the threshold for these procedures is reached in line with Article 7(2) of Protocol No 2.

---

[18] Further information on fitness checks on the REFIT platform website: https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/refit-platform-work-progress_en.

[19] For the procedure on how the European Parliament deals with national Parliaments' reasoned opinions, see the Annual Report 2016 on Subsidiarity and Proportionality, point 2.3.

[20] All submissions of national Parliaments are made available on 'Connect', the European Parliament's database of national Parliaments' submitted documents: http://www.europarl.europa.eu/relnatparl/en/connect/welcome.html

[21] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0120+0+DOC+XML+V0//EN

[22] On COSAC, see section 5 below

[23] See the European Parliament's reply in Annex to the 29th Bi-annual Report EN (p 346), http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc565f936fe0165fc71d02603b4

The JURI Committee also suggested that the eight-week period for national Parliaments to issue reasoned opinions could be extended on the basis of justified objective reasons (e.g. natural disasters and recess periods). This could be achieved through a political agreement between the European Union institutions and national Parliaments. Moreover, the JURI Committee proposed that the Commission could evaluate, together with the national Parliaments, the possibility of laying down non-binding guidelines to help national Parliaments in assessing compliance with the principles of subsidiarity and proportionality, without undermining their discretion.

The European Parliamentary Research Service also continued to help the European Parliament to take account of the principles of subsidiarity and proportionality in its work:

- by systematically scrutinising the subsidiarity and proportionality aspects of Commission impact assessments and drawing attention to any concerns expressed in this respect, notably by national Parliaments and the Committee of the Regions[24];
- by ensuring that these principles are fully respected in the European Parliament's own work, for example when carrying out impact assessments of its own substantial amendments or analysing the added value of Parliament's proposals for new legislation, based on Article 225 TFEU, and the cost of no action at the level of the European Union; and
- by scrutinising the subsidiarity and proportionality aspects when drafting impact assessments, focusing on the added value of the European Union rather than national spending or national actions.

2.3. The European Council and the Council of the European Union

The European Council, in the conclusions adopted at its meeting of 14 December 2018 in the context of further completing the European Union Single Market Agenda[25], 'called for implementing and enforcing, at all levels of government, decisions taken and rules adopted, as well as upholding standards and ensuring the smart application of better regulation principles, *including subsidiarity and proportionality*'. In these conclusions, the European Council also welcomed, in view of preparing the next Strategic agenda of the Leaders, the joint report on the Citizens' Consultations. This joint report, submitted on behalf of the Austrian Presidency and the incoming Romanian Presidency of the Council of the European Union (hereafter: 'the Council'), underlined the importance of the subsidiarity principle[26].

In its conclusions of 30 November 2018 on the European Court of Auditors' Special Report No 16/2018 'Ex-post review of EU legislation: a well-established system, but incomplete'[27], the

---

[24] In 2018, the European Parliament produced 64 Initial Appraisals of Commission impact assessments, one detailed appraisal of a Commission impact assessment and one full impact assessment, 17 ex-post European impact assessments, 6 other ex-post evaluations and 4 Implementation in action papers related to this. It also completed three reports on the cost of non-Europe, six European Added Value Assessments and one cost-benefit analysis.

[25] EUCO doc 17/18., point II/2 and IV/15, available at: https://data.consilium.europa.eu/doc/document/ST-17-2018-INIT/en/pdf.

[26] Council doc 14535/18, page 7, available at: https://data.consilium.europa.eu/doc/document/ST-14535-2018-INIT/en/pdf

[27] Council doc 14137/18, point 3, available at: https://data.consilium.europa.eu/doc/document/ST-14537-2018-INIT/en/pdf.

Council *'underlined the importance* of the Interinstitutional Agreement on Better law-making (..), its relevant aims- such as legislative focus on areas with greatest added value for European citizens, simplifying Union legislation and avoiding overregulation and *the principles like subsidiarity, proportionality*, legal certainty and transparency'.

Under Article 4 of Protocol No 2 to the Treaties, the Council shall forward to national Parliaments all draft legislative acts (and amended drafts) originating from a group of Member States, the Court of Justice of the European Union, the European Central Bank or the European Investment Bank. In addition, under Article 6 of Protocol No 2, the President of the Council shall forward any national Parliament's opinion on a draft legislative act originating from a group of Member States to the governments of the proposing Member States. Similarly, the President of the Council shall also forward national Parliaments' opinions on draft legislative acts originating from the Court of Justice, the European Central Bank or the European Investment Bank to the institution or body concerned.

In April 2018, the Council transmitted to national Parliaments a request from the Court of Justice for a Regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice under Article 281 TFEU[28]. In October 2018, it transmitted to national Parliaments a request from the European Investment Bank to the Council to amend the European Investment Bank's Statute, based on the special legislative procedure laid down in Article 308 TFEU[29].

In addition to its Treaty obligations, the Council also keeps Member States informed of national Parliaments' opinions on Commission legislative proposals. In 2018, the General Secretariat of the Council distributed to the delegations 36 reasoned opinions, received under Protocol No 2, and 200 opinions issued under the political dialogue[30].

2.4. The Committee of the Regions[31]

The year 2018 was marked by the work of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'[32], in which the delegation of the European Committee of the Regions ('the Committee') emphasised the importance of local and regional authorities in monitoring subsidiarity and proportionality and in the decision-making process in Europe as a whole.

The work of the Task Force has resulted, in the Committee's view, in a significant shift as to how subsidiarity and proportionality are regarded within the European Union, and has highlighted the necessity for a new approach to European Union's policymaking. Following the end of the Task Force's mandate, the Committee expressed on a number of occasions its

---

[28] Council 2018/0900 (COD) — doc. 7586/18, available at https://data.consilium.europa.eu/doc/document/ST-7586-2018-INIT/en/pdf

[29] Council 2018/0811 (CNS) — doc. 13166/18, available at: https://data.consilium.europa.eu/doc/document/ST-13166-2018-INIT/en/pdf

[30] There is a discrepancy in the number of reasoned opinions registered by the European Parliament, the Council and the Commission, as not all institutions received all reasoned opinions, or the institutions count the number of reasoned opinions received differently. See also footnote 45

[31] A more detailed description of subsidiarity related activities is provided in the 2018 Subsidiarity Annual Report issued by the Committee of the Regions, available after adoption by the Committee of the Region's Bureau http://portal.cor.europa.eu/subsidiarity/Pages/default.aspx

[32] On the work of this Task Force, see also section 2.1.

commitment to this new approach, dubbed as 'Active Subsidiarity — a new way of working', most notably with its Bureau declaration[33] of 14 September 2018. The Committee also took concrete steps and actions to implement this 'Active subsidiarity' approach within its consultative and political work.

A major example of these efforts is the pilot project for a network of regional hubs to assess the implementation of the European Union's legislation[34]. The project was among the recommendations of the Task Force's final report and was approved by the Bureau of the Committee on 8 October 2018. Its main goal was to channel local and regional experience on implementing European policy to increase the added value of Union laws. The pilot phase is planned to run for two years with 20 participating regions and was launched politically at the eighth European Summit of Regions and Cities on 14-15 March 2019 in Bucharest.

In 2018, the Committee again implemented the Subsidiarity work programme as its main instrument of monitoring subsidiarity. Originally, five priority initiatives and five additional initiatives were selected from the Commission's 2018 Work Programme. However, due to the work of the Committee's delegation to the Task Force, the regular subsidiarity monitoring activities of the Committee were suspended for the first half of 2018. As part of the revised Subsidiarity work programme for the second half of 2018[35], two priority initiatives were monitored out of the five originally selected.

In addition, based on its own Rules of Procedure, the Committee assessed compliance with the subsidiarity and proportionality principles in the legislative proposals on which it issued opinions[36]. In 2018, it adopted 78 opinions, out of which 40 related to a legislative proposal, 35 included an assessment of compliance with the subsidiarity principle, and 33 included an assessment of compliance with the proportionality principle.

The Subsidiarity Expert Group carried out two consultations on the priority initiatives in the Subsidiarity work programme in the second half of 2018 to support the work of the rapporteurs.

The Social Fairness package[37] was the first of the priority initiatives included in the Subsidiarity work programme for the second half of 2018. The Subsidiarity Steering Group highlighted that focus should be placed on the legislative initiatives relating to establishing a European Labour Authority, published on 13 March 2018[38]. The Subsidiarity Expert Group was therefore consulted regarding the legislative proposal on establishing a European Labour Authority, and the majority of experts raised concerns regarding the application of subsidiarity, but did not see this proposal as a clear breach of the principle.

The main issue highlighted in the contributions is whether the new European Labour Authority is indeed a better alternative, in the sense of scale and effect, to a reinforced cooperation mechanism between national authorities. The opinion concluded that: 'the subsidiarity principle has to be complied with fully at every development level of the European Labour Authority and

[33] Declaration of the Bureau on the Implementation of the principles of subsidiarity and proportionality, COR-2018-03130-00-02-DECL-TRA.

[34] Subsidiarity task force follow-up: Pilot project for a network of regional hubs to assess the implementation of EU legislation, COR-2018-03132-05-00-NB-TRA.

[35] COR-2018-01703-09-00-NB-TRA.

[36] Rule 55.2 of the Rules of Procedure OJ L65, 5.3.2014, p41.

[37] COM(2018) 131 and COM (2018) 132.

[38] COM(2018) 131.

all national competences in labour and social policy matters respected', noting that the European Labour Authority must allow for the different labour market models and priorities that Member States may have.

The Multi-annual Financial Framework was the second priority initiative in the Subsidiarity work programme for the second half of 2018. Out of the package of legislative proposals, the only proposal where concerns were raised was the Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States[39], where it was highlighted that there was no impact assessment and that, due to its importance and completely new content, this should be regarded as a fundamental procedural deficiency. While 'it welcomes the Commission's intention to introduce three new own resources', the opinion includes that the Committee of the Regions 'finds it regrettable that the Commission proposal to introduce new own resources does not provide a sufficient assessment of compliance with the subsidiarity principle and the proposal's potential impact on the financial situation of local and regional authorities has not been evaluated'. The Commission replied that the introduction of new resources would reduce the contribution of the Member States based on Gross National Income, and that the principle of sharing a common tax base between the European Union and the Member States, for example the Value Added Tax, was a well-established practice.

Apart from its contributions on selecting and analysing the priority initiatives of the Subsidiarity work programme for the second half of 2018, the Subsidiarity Expert Group was also consulted to facilitate the work of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'. The experts were consulted on Task (a) of the Task Force mandate, notably on the Subsidiarity Assessment Grid, and the results were included in the Committee members' contribution to the third meeting of the Task Force on 15 March 2018.

The Subsidiarity Steering Group, which supports the work of the Committee's delegation to the Task Force, met five times in 2018, which is more than in the previous years. On 28 May 2018, the Committee hosted a Hearing of the Task Force to support its work. This hearing was an opportunity for interested parties to directly voice their concerns and suggestions to the Task Force, and served to inform the Task Force's final report.

The Subsidiarity Monitoring Network[40] continued to be an important instrument for the Committee's subsidiarity monitoring activities. The network changed only slightly in comparison to 2017, with the number of partners increasing from 155 to 156 by the end of 2018. The sole newcomer from 2018 was the Maia municipality from Portugal.

In 2018, the level of activity of the Subsidiarity Monitoring Network's REGPEX[41] platform continued to grow. The sub-network of the Subsidiarity Monitoring Network's sub-network open

---

[39] COM(2018) 324.

[40] http://portal.cor.europa.eu/subsidiarity/thesmn/Pages/default.aspx, launched in April 2007, the Subsidiarity Monitoring Network was set up to facilitate the exchange of information between local and regional authorities and the Union level regarding various documents and legislative and political proposals from the Commission. It serves as an access point enabling all of its partners not only to obtain information but also to express their views.

[41] http://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx, the Subsidiarity Monitoring Network's sub-network for regional assemblies with legislative powers serves to support the participation of its partners in the early phase of the European Union's legislative procedure (the Early Warning System period).

to parliaments and governments of regions with legislative powers is being used more and more, with 95 contributions made in 2018. This is a very significant increase on previous years (66 contributions in 2017, 28 contributions in 2016), which could reflect the rising political relevance of subsidiarity and proportionality within the European Union. The proposals that received the highest number of reactions from REGPEX partners were the proposals for a Directive on the quality of the water intended for human consumption[42] and for a Decision on a Union Civil Protection Mechanism[43], both with six contributions.

2.5. The Court of Justice of the European Union

In 2018, the Court of Justice delivered one judgment regarding the respect of the principles of subsidiarity and of proportionality by the Union legislature. It confirmed that these principles had been respected. This was in the case *Swedish Match AB* of 22 November 2018[44] (Case C-151/17), in which the Court of Justice confirmed the validity of Directive 2014/40/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products in the light of those principles.

On the principle of proportionality, the preliminary ruling confirmed that the Union's legislature was entitled, on the basis of scientific studies, in the exercise of the broad discretion available to it in that regard and in conformity with the precautionary principle, to conclude that the placing on the market of tobacco products for oral use could create public health risks. As regards the appropriateness of the prohibition on the placing on the market of tobacco products for oral use to attaining the objective of ensuring a high level of protection of public health, the Court of Justice considered that the Directive did not manifestly exceed what is necessary in order to attain the objective of ensuring a high level of protection of public health.

In considering the principle of subsidiarity, the Court of Justice noted that Directive 2014/40 pursues a twofold objective, in that it seeks to facilitate the smooth functioning of the internal market for tobacco, while ensuring a high level of protection of human health.

Given the interdependence of these two objectives, the Union's legislature could legitimately take the view that it had to establish a set of rules for the placing on the European Union's market of tobacco products for oral use and that the twofold objective could best be achieved at European level. In particular, the Court of Justice considered that, even if the second of those objectives might be better achieved at the level of Member States, the fact remains that pursuing it at that level would be liable to entrench situations in which some Member States permit the placing on the market of tobacco products for oral use, while other Member States prohibit it. This would run completely counter to the first objective of Directive 2014/40/EU, namely improving the functioning of the internal market for tobacco and related products.

---

[42] COM(2017) 753.

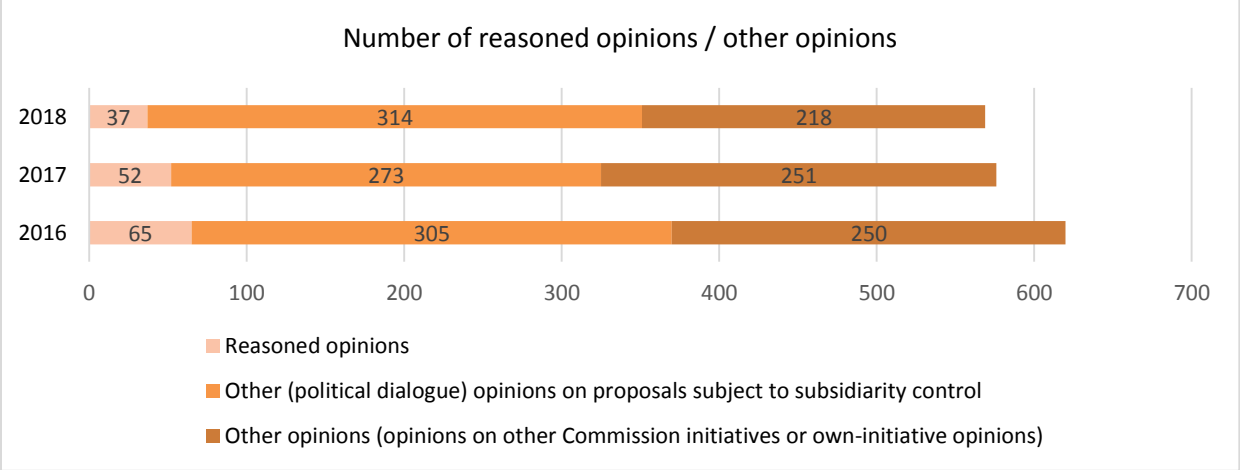
[43] COM(2017) 772.

[44] Judgment of 22 November 2018, C-151/17 (request for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) — United Kingdom) — Swedish Match AB v Secretary of State for Health, EU:C:2018:938.

3. APPLICATION OF THE SUBSIDIARITY CONTROL MECHANISM BY NATIONAL PARLIAMENTS

3.1. Overview

In 2018, the Commission received 37 **reasoned opinions** from national Parliaments[45], which was significantly less than in 2016 (65) and in 2017 (52). The overall number of opinions received in 2018 was almost the same as in previous years (576 in 2017, 569 in 2018), meaning that the proportion of reasoned opinions compared to the overall number of opinions received continued to decrease, falling from 10.5 % in 2016 and 9 % in 2017 to 6.5 % in 2018. The proportion of reasoned opinions compared to the overall number of opinions concerning Commission proposals subject to the subsidiarity control mechanism also fell sharply, from 17.6 % (65/370) in 2016 and 16 % (52/325) in 2017 to 10.5 % (37/351) in 2018.



The 37 reasoned opinions received in 2018 concerned 22 different proposals or packages (see Annex 1). None received more than four reasoned opinions (with between five and seven votes). This contrasts with the situation in 2016, where the proposal to review the Directive on posting of workers had received 14 reasoned opinions and triggered the 'yellow card' procedure, and in 2017, where the proposal on the internal market of electricity generated 11 reasoned opinions without triggering this procedure. The proposals giving rise to most reasoned opinions were those on the revision of the Drinking Water Directive, on the taxation of digital activities in the Union and on streamlining measures for advancing the realisation of the trans-European transport network. Each generated four reasoned opinions. Section 3.2 describes them in more detail.

While reasoned opinions sent by national Parliaments generally question the added value of the proposed action at European level compared to action at national, regional or local level, it is

[45] This number refers to the total number of opinions received from parliamentary chambers under Protocol No 2 to the Treaties. A reasoned opinion concerning more than one Commission proposal is only counted as one reasoned opinion for statistical purposes, while for determining whether the threshold for a yellow/orange card is reached for a Commission proposal, this reasoned opinion counts as one reasoned opinion for each of the proposals covered. By contrast, the European Parliament counts as many reasoned opinions as proposals concerned.

also worth mentioning that, conversely, the reasoned opinion issued by the French *Assemblée nationale* on strategic plans under the common agricultural policy[46] opposed excessive delegation of power to Member States and found that the policy would be more effectively implemented at Union level.

The decrease in the total number of reasoned opinions issued in 2018 reflected a similar decrease in the number of reasoned opinions issued per chamber. 14 out of 41 chambers issued reasoned opinions in 2018 (compared with 26 in 2016 and 19 in 2017). The chamber that issued by far the largest number of reasoned opinions was, the Swedish *Riksdag*. It alone issued 12 reasoned opinions, more than one third of the total. Other chambers that issued reasoned opinions in 2018, in alphabetical order of Member States, were: the Czech *Poslanecká sněmovna* (4), the Czech *Senát* (1), the Danish *Folketing* (2) the Irish *Dáil and Seanad Éireann* (4)[47], the German *Bundestag* (2), the French *Sénat* (2), the French *Assemblée nationale* (1), the Italian *Senato della Repubblica* (1), the Maltese *Kamra tad-Deputati* (1), the Dutch *Tweede Kamer* (1), the Austrian *Bundesrat* (3) and the British House of Commons (2) and House of Lords (1).

3.2. Key cases

This section presents the three individual proposals/packages that received the greatest number of reasoned opinions in 2018 (four each).

- *Proposal on the revision of the Drinking Water Directive*

On 1 February 2018, the Commission proposed to recast the Directive on the quality of water intended for human consumption[48]. This proposal gave rise to four reasoned opinions[49].

The Austrian *Bundesrat* questioned the benefit of the suggested provisions on hazard assessment and information to the public and the compatibility of the provisions on access to justice with the Austrian legal system. The Irish *Dáil and Seanad Éireann* found that the proposal unnecessarily limited the scope for national decision-making and did not take into account existing arrangements at national level and local and regional considerations. The British *House of Commons* argued that the proposal failed to explain the greater benefit of acting at European level and gave Member States too little discretion to implement the new provisions, in particular on the requirement to provide access to drinking water in public spaces. The Czech *Poslanecká sněmovna* considered that the quality of water and matters connected with free access to water in public spaces could be sufficiently achieved by Member States at central, regional and local level.

In its replies to the subsidiarity concerns expressed by national Parliaments, the Commission emphasised that by proposing the revision of the Drinking Water Directive it was responding to the first ever successful European citizens' initiative 'Right2Water' and to a resolution of the

[46] COM(2018) 392.

[47] The *Dáil* and *Seanad Éireann* submitted four joint reasoned opinions.

[48] COM(2017) 753.

[49] From the Austrian *Bundesrat*, the Czech *Poslanecká sněmovna*, the Irish *Dáil and Seanad Éireann* and the British House of Commons. The Commission also received four opinions in the context of the political dialogue, namely from the Czech *Senát*, the German *Bundesra*t, the Portuguese *Assembleia da República* and the Romanian *Senat*. They all supported measures at Union level but, for three of them (except the one from the Portuguese *Assembleia da República*), also raised some proportionality concerns. The contributions sent by regional Parliaments (see section 2.4 above) were generally critical of the proposal.

European Parliament calling on the Commission to come forward with legislative proposals in line with the primary objective of the European citizens' initiative[50]. It was also following up on the United Nations Agenda 2030. Moreover, the evaluation of the Drinking Water Directive[51] confirmed the value of drinking water legislation at European level. The Commission therefore maintained that the proposal's objective of protecting human health by ensuring high quality drinking water for citizens across Europe could be better achieved at European level. The Commission also recalled that the proposal left Member States a wide margin of discretion when turning the Directive into national law and implementing it.

- *Proposal for Directives on the taxation of digital activities in the Union*

On 21 March 2018, the Commission adopted a proposal for a Directive laying down rules relating to the corporate taxation of a significant digital presence[52] and a proposal for a Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services[53]. These Directives formed parts of a package on the taxation of digital economy and aimed to tackle the problems posed by the current corporate tax framework not keeping pace with the new features of the digital sector. These two proposals triggered four reasoned opinions[54]. The four chambers that issued reasoned opinions argued that taxation was primarily a matter for Member States and that the aim of the proposals could be better achieved through national solutions coordinated at international level, notably under the Organisation for Economic Cooperation and Development.

In its replies, the Commission stressed that taxation of digital activities had an international dimension because it was rooted in the international tax framework and concerned cases where digital activities were performed cross-border. Uncoordinated national actions in this area would create complexity, lead to distortions in the single market and increase the risk of double taxation. Against this, a European solution would add value compared to different national policies because it would reduce the compliance burden for businesses subject to the new rules and send a strong signal to the international community that the European Union is committed to ensuring the fair taxation of the digital economy. The Commission has been working closely with the Organisation for Economic Cooperation and Development to support the development of an international solution, but this would take time and the proposal on the corporate taxation of a significant digital presence would stimulate international discussions.

- *Proposal for a Regulation on streamlining measures for advancing the realisation of the trans-European transport network*

---

50 European Parliament Resolution of 8 September 2015 on the follow-up of the European Citizens' Initiative 'Right2Water', 2014/2239(INI); OJ C 316, 22.9.2017, p. 99.

51 SWD(2016) 428 final.

52 COM(2018) 147.

53 COM(2018) 148.

54 From the Danish *Folketing*, the Irish *Dáil and Seanad Éireann*, the Maltese *Kamra tad-Deputati* and the Dutch *Tweede Kamer*. The Commission also received 5 opinions in the context of the political dialogue, namely from the Belgian *Chambre des représentants*, the Czech *Senát*, the Spanish *Cortes Generales* (2 opinions) and the Portuguese *Assembleia da República*. These opinions, while generally supportive of the initiative, emphasised the need for a good articulation between action at Union level and international negotiations.

On 27 May 2018, the Commission adopted a proposal for a Regulation on streamlining measures for advancing the realisation of the trans-European transport network[55]. This proposal aims to support the efficient and timely implementation of the trans-European transport core network and requires each Member State to designate a single competent permit granting authority. It gave rise to four reasoned opinions[56].

The Swedish *Riksdag* supported the objectives of the proposal but criticised the proposed scope of the draft Regulation, which would include all infrastructure components of the trans-European transport core network, consisting of national transport networks subject to national planning and permit granting procedures. In the opinion of the *Riksdag*, there is no need to thoroughly control national planning and permit granting procedures, nor the functioning of national institutions, including local and regional self-government. The German *Bundestag* also supported the objectives of the proposal but considered that these objectives could be achieved as efficiently by Member States at central, regional or local level, without each Member State having to designate a single competent authority. It also criticised the choice of a Regulation, considering that a Directive would have allowed the national specific situations to be taken into greater consideration. The Czech *Senát* considered that the proposed single integrated procedure did not take into account the complexity of the situations encountered and that the current situation could be improved by exchanging good practice between Member States. The Irish *Oireachtas* considered that the proposal unnecessarily limited national decision-making and did not take into account local and regional considerations.

In its replies, the Commission explained that the proposal targets the trans-European transport core network, the cross-border and European-wide importance of which is clear, and that only by delivering this whole core network will the European Union be able to reap all the benefits of the network. While agreeing that the single competent authority should be designated in line with national legal frameworks and administrative set-ups, the Commission stressed that having this single competent authority should make the procedures less complex, more efficient and more transparent. The Commission also emphasised that in some Member States, these permit-granting procedures are already integrated and centralised with one competent body acting as a leader for the whole process. This explains why it chose a Regulation rather than a Directive, so as not to require national measures to turn a Directive into national laws when the national organisation is already compliant.

4. POLITICAL DIALOGUE WITH NATIONAL PARLIAMENTS

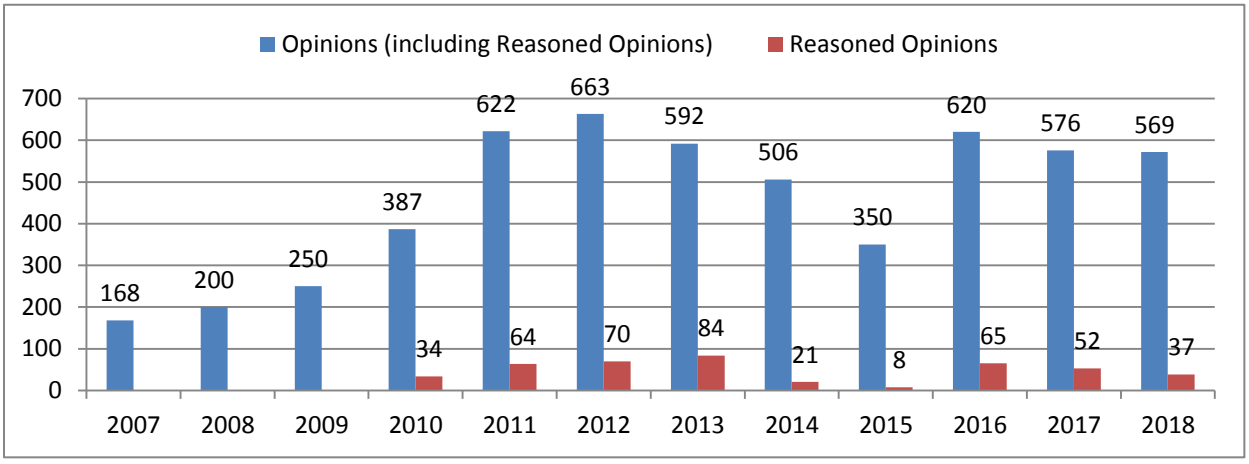
General observations on the written opinions

In 2018, national Parliaments addressed 569 opinions (including the 37 abovementioned reasoned opinions) to the Commission. This is roughly similar to 2017, when national Parliaments issued 576 opinions. Among these 569 opinions, 351 (62%) concerned Commission proposals subject to the subsidiarity control mechanism. The remaining 218 opinions (38%) either concerned non legislative initiatives such as communications or were own initiative

[55] COM(2018) 277.

[56] From the Czech *Senát*, the German *Bundestag*, the Irish *Dáil and Seanad Éireann* and the Swedish *Riksdag*. The Commission also received three opinions in the context of the political dialogue, namely from the German *Bundesrat*, the French *Assemblée nationale* and the Portuguese *Assembleia da República*, which also raised some concerns about the proportionality of the actions proposed.

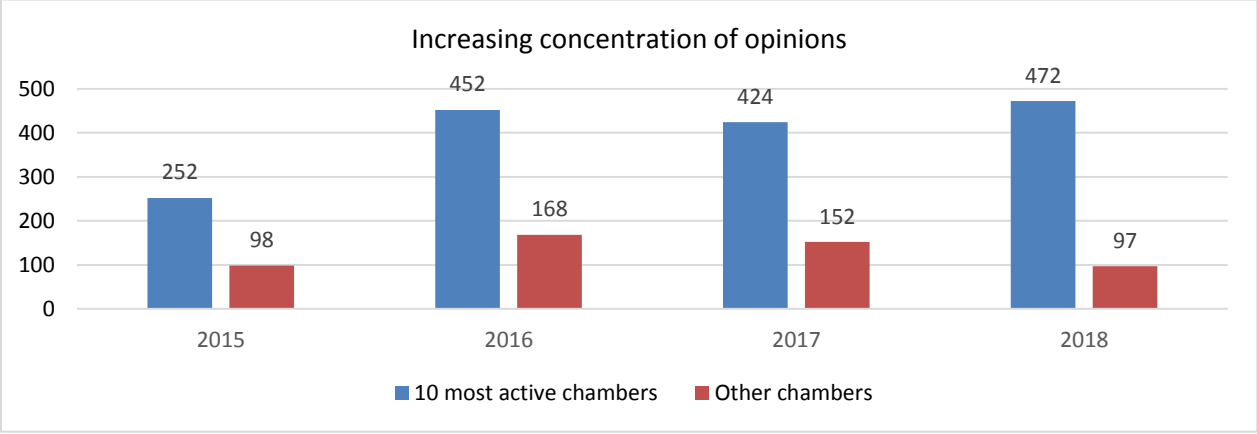
opinions. This relatively high proportion shows national Parliaments' interest in providing valuable political input to the Commission as early as possible in the decision-making process.



Participation and scope

Even more than in previous years, the number of opinions sent to the Commission differed substantially between the national Parliaments. The ten most active chambers issued 472 opinions, i.e. 83% of the total (2017: 74% 2016: 73%, 2015: 72%), while 10 chambers[57] (four in 2017) issued no opinion.

The chamber that submitted the highest number of opinions in 2018 was the Portuguese *Assembleia da República*. Its 99 opinions accounted for more than 17% of the total number of opinions received. The other nine national Parliaments or chambers that sent the highest numbers of opinions in 2017 were the Czech *Senát* (81 opinions), the Spanish *Cortes Generales* (53 opinions), the German *Bundesrat* (52 opinions), the Romanian *Camera Deputaților* (48 opinions), the Romanian *Senat* (45 opinions), the Czech *Poslanecká sněmovna* (37 opinions), the French *Sénat* (24 opinions), the Italian *Senato della Repubblica* (18 opinions) and the Swedish *Riksdag* (15 opinions). Annex 2 shows the number of opinions sent by each chamber.



[57] Austrian Nationalrat, Bulgarian Narodno Sabranie, Cypriot Vouli ton Antiprosopon, Estonian Riigikogu, Finnish Eduskunta, Greek Vouli ton Ellinon, Latvian Saeima, Luxembourg Chambre des Députés, Slovenian Državni svet and Državni zbor.

Main topics of the opinions in political dialogue

Even more than in previous years, in 2018 national Parliaments' opinions were divided into a wide range of topics. No Commission initiative attracted as widespread attention from national Parliaments as the Clean Energy Package had in 2017 (62 opinions). The six following packages, which attracted between 11 and 15 opinions each[58], gathered most attention from national Parliaments:

1. Completing Economic and Monetary Union — 15 opinions
2. Regional Development and Cohesion Policy beyond 2020- 13 opinions
3. A New Deal for Consumers — 11 opinions
4. Common Agricultural Policy beyond 2020 – 11 opinions
5. European Labour Authority and access to social protection- 11 opinions
6. Future of Learning — 11 opinions

- *Multiannual Financial Framework 2021-2027 – horizontal aspects*

The proposals for the Multiannual Financial Framework 2021-2027, for a system of own resources of the European Union and for the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, adopted by the Commission on 2 May 2018[59], directly triggered eight opinions from six chambers[60], including one reasoned opinion[61]. These proposals were complemented, in late May and in June, by a number of sectoral proposals or packages for programmes to support and implement European policies[62], among which those on regional development and cohesion (13 opinions) and on agriculture (11 opinions) attracted most attention from national Parliaments (see below).

The eight opinions directly concerning the 2 May package generally supported certain parts of the proposals, such as simplification of the budget structure and enhanced flexibility in managing European funds. However, some of them also expressed reservations on the reduction of the funding of 'traditional' policies, such as agriculture and cohesion, and/or on the new own resources system proposed, and specifically on the own resource linked to the Common Consolidated Corporate Tax Base.

---

58 No individual Commission document attracted more than ten opinions. Annex 3 lists those documents that triggered more than seven opinions.

59 COM(2018) 321, 322, 323, 324, 325, 326, 327 and 328 of 2 May 2018.

60 Czech Poslanecká sněmovna, Czech Senát (three opinions), German Bundesrat, Portuguese Assembleia da República, Romanian Camera Deputaților, Swedish Riksdag.

61 From the Swedish *Riksdag* on COM(2018) 325 and 327 (own resources).

62 Regional development and cohesion (29 May); Social and globalisation funds, Erasmus, Creative Europe, Justice, Rights and Values, and Anti-Fraud Programme (30 May); European Investment Stabilisation Function, Reform Support Programme, and anti-counterfeiting (31 May); Common Agricultural Policy, Environment and Climate Action Programme (LIFE) and European Maritime and Fisheries Fund (1 June); Invest EU, Connecting Europe Facility, Digital Europe and space programmes (6 June); Research and Innovation (Horizon Europe, ITER and Euratom) and Single Market Programme (7 June); Tax and customs (8 June); European Solidarity Corps (11 June); Asylum and Migration Fund, customs control equipment and border management and visa (12 June); European Defence Fund, Internal Security Fund, Nuclear Safety and decommissioning assistance (13 June); Neighbourhood Development and International Cooperation Instrument, Pre-accession Assistance, and Overseas Countries and Territories (14 June).

In its replies, the Commission explained that, while its proposals focused on the new priorities agreed by the leaders and on areas where the budget of the European Union brings the highest added value, the moderate decreases proposed for agricultural policy and cohesion policy spending should not damage the fulfilment of the objectives of these policies. It also emphasised that the basket of new own resources would be more directly linked to the European Union's policies than is the case for most current revenue sources, and that introducing a Common Consolidated Corporate Tax Base would mitigate distortions by creating a fairer and more coherent tax environment for businesses, avoid a race to the bottom in terms of corporate taxation among Member States and provide a strong contribution to fighting tax avoidance and the erosion of the tax base.

- *Regional Development and Cohesion Policy beyond 2020*[63]

The Commission adopted a package of proposals on 31 May 2018 designed to tackle inequalities between the different regions in Europe in terms of their economic, social and territorial cohesion. The new cohesion policy proposals aim to address the main European Union priorities, such as combatting unemployment and steering economic and social development to boost competitiveness and convergence. They also aim to make cohesion policy funding more effective for investments and projects in cross-border regions, thus boosting growth in border regions.

In 2018, seven chambers[64] submitted 13 opinions, including one reasoned opinion[65]. They generally supported the objectives of the package and welcomed the simplification of procedures (some wished further simplification) as well as the division of regions into three categories according to their development, but rejected the proposed decreases to cohesion policy spending and in particular to the European territorial cooperation goal (Interreg). Several chambers raised concerns on the high thematic concentration on certain policy objectives and/or called for more flexibility for Member States. Some had doubts about the mechanism to resolve legal obstacles and/or about the return to the two-year deadline for the lifting of appropriations ('N+2').

In its replies, the Commission emphasised that adjustments were needed in the cohesion policy budget, as well as in the allocation for the European territorial cooperation goal (Interreg) due to various issues such as Brexit and to the need to provide support for new priorities. However, the proposed cohesion policy would still be the most significant policy of the Union in terms of financial volume and would continue to cover all regions.

The Commission pointed out that through thematic concentration the cohesion policy resources would not be spread too thinly and that higher concentration requirements for certain policy objectives would go hand in hand with a greater flexibility given to Member States. This includes the possibility to define the requirements at national level, taking into account the needs and potential of their regions. It emphasised that the progressive return to the N+2 rule, coupled with more than 80 simplifications proposed, including lighter and more strategic programming and reporting requirements and lower levels of pre-financing, would contribute to speeding up implementation of the Interreg programme.

---

63 COM(2018) 372, 373, 374 and 375 of 29 May 2018.

64 Czech *Senát* (two opinions), German *Bundesrat* (three opinions*)*, Spanish *Cortes Generales*, Italian *Senato della Repubblica*, Portuguese *Assembleia da República (*four opinions*)*, Romanian *Senat*, Swedish *Riksdag*.

65 From the Swedish *Riksdag* on COM(2018) 373.

The Commission also explained that the objective of the proposed mechanism to resolve legal obstacles was to help the Member States with no such mechanisms to resolve legal obstacles and to enable actors in border regions to develop joint projects, and that it did not interfere with national legislative competence or impose any new obligations on Member States with comparably effective mechanisms.

- *Common Agricultural Policy beyond 2020*[66]

On 1 June 2018, the Commission presented a package of three legislative proposals on the common agricultural policy beyond 2020. It aimed to make this policy more responsive to current and future challenges such as climate change or generational renewal, while continuing to support European farmers in creating a sustainable and competitive agricultural sector. To simplify and to modernise the common agricultural policy, the Commission also proposed, based on strategic plans, giving Member States more flexibility to set out the details of interventions.

10 chambers[67] submitted 11 opinions on this package, including one reasoned opinion[68]. Most chambers welcomed the fact that the current structure of the common agricultural policy, which is divided in two strands, as well as its proposed objectives have been maintained for the next programming period. However, they also underlined the need for sufficient financial resources for this policy. Some chambers disagreed with the reduction in the funding for the rural development policy, and/or with the compulsory capping and degressivity of direct payments. They believe that Member States should have the possibility to decide, on the basis of their specific conditions, whether or not they introduce these instruments. Moreover, one chamber opposed an excessive delegation to Member States of powers that would be better exerted at European level[69].

In its replies, the Commission, referring to the withdrawal of the United Kingdom from the European Union and to the need to address existing and new political priorities, explained that in this challenging budgetary context, its proposal to allocate € 365 billion for the common agricultural policy in 2021-2027 was a strong signal of continued support for the future of European Union farming and rural areas. It stressed that direct payments would decrease only moderately, and that a rebalancing of support between the European Union and the Member States was proposed for rural development, including the possibility for increased national contributions in order to keep an adequate level of support to rural areas.

The Commission also explained that giving more flexibility to Member States to set out the details of interventions according to their needs would offer them increased potential for better targeting and simplification. It emphasised that its proposals aimed to keep the common agricultural policy fit for purpose, based on a modernisation and simplification of the policy framework, on a fairer and more targeted distribution of direct payments, and on an enhanced climate and environmental ambition and action for growth and jobs in rural areas, while contributing to other policies and to international commitments of the European Union (e.g. Paris Climate Agreement and United Nations Sustainable Development Goals).

---

66 COM(2018) 392, 393 and 394 of 1 June 2018.

67 Czech Senát, German Bundesrat, Spanish Cortes Generales, French Assemblée nationale, Croatian Hrvatski Sabor, Irish Dáil and Seanad Éireann, Italian Camera dei Deputati, Polish Sejm, Portuguese Assembleia da República (two opinions), Romanian Senat.

68 From the French *Assemblée nationale* on COM(2018) 392.

69 On this reasoned opinion from the French *Assemblée nationale*, see also 3.1 above.

- *Completing Economic and Monetary Union*[70]

On 6 December 2017, the Commission published a roadmap for deepening Europe's Economic and Monetary Union, with the aim to enhance the unity, efficiency and democratic accountability of Europe's Economic and Monetary Union by 2025.

It comprised four main initiatives:

1) a proposal to establish a European Monetary Fund, anchored in the Union's legal framework and built on the established structure of the European Stability Mechanism;
2) a proposal to integrate the substance of the Treaty on Stability, Coordination and Governance into the Union legal framework, taking into account the appropriate flexibility built into the Stability and Growth Pact;
3) a Communication on new budgetary instruments for a stable euro area within the Union framework; and
4) a Communication spelling out the possible functions of a European Minister of Economy and Finance who could serve as Vice-President of the Commission and chair the Eurogroup, as provided under the current Treaties.

In 2018, seven chambers[71] submitted 15 opinions on the package. Most national Parliaments agreed that the stability of the Economic and Monetary Union was a strategic interest of the Union and supported the package in principle but considered that some of the proposals needed to be clarified. Most chambers supported the creation of the position of a European Minister of Economy and Finance, with some concerns about a possible change of the Treaties of the European Union being necessary for this to happen. Some were concerned that deepening the Economic and Monetary Union would lead to powers being transferred from the national level to the European Union, particularly in the fiscal area and in the supervision of the banking sector.

In its replies, the Commission agreed that several proposals in the package still needed to be developed. In particular, several proposals as mentioned in the Commission's Communication 'New Budgetary Instruments for a Stable Euro Area within the Union Framework" were outlined alongside the Commission's proposals on the next Multiannual Financial Framework. The Commission welcomed the opinion of the national Parliaments that the stability of the Economic and Monetary Union is a strategic interest of the European Union.

The Commission also took note of the scepticism of some national Parliaments about the idea of a European Minister of Economy and Finance. However, the Commission considered that the creation of this position would help to increase the efficiency and democratic accountability of economic governance in the euro area and the European Union as a whole.

- *A New Deal for Consumers*[72]

In line with the objectives of the 'New Deal for Consumers' announced by President Juncker in his State of the Union address 2017, the Commission adopted a communication and two proposals for directives on 11 April 2018 aiming at improving compliance with European Union

[70] COM(2017) 821, 822, 823, 824, 825, 826 and 827 of 6 December 2017.

[71] Czech *Poslanecká sněmovna*, Czech *Senát* (four opinions), German *Bundesrat* (two opinions), Spanish *Cortes Generales*, Italian *Camera dei Deputati* (five opinions), Italian *Senato della Repubblica*, Romanian *Senat.*

[72] COM(2018) 183, 184 and 185.

consumer protection legislation, modernising it in the light of market developments and alleviating burdens on businesses where appropriate. Regarding compliance, these proposals upgrade the already existing injunctions procedure enabling duly designated qualified entities to protect the collective interests of consumers and complement it with a mechanism of collective redress. The proposals also further harmonise rules on penalties for breaches of consumer law, in particular in the event of widespread cross-border infringements, and provide for the right to remedies for victims of unfair commercial practices. As for modernisation of European Union consumer law, the proposals strengthen transparency in online transactions and extend the protection of consumers when they use "free" services.

Eight chambers[73] submitted 11 opinions, including three reasoned opinions[74].

Whereas most of the chambers supported the Commission's efforts to modernise consumer legislation, several chambers expressed reservations about the proposed rules on the strengthening of penalties, in particular as regards allocation of revenues from fines, and the right to remedies for victims of unfair commercial practices. Some chambers also criticised the proposed changes on the right of withdrawal, dual quality of products, unsolicited doorstep selling and commercial excursions. As regards representative actions, a number of chambers suggested to clarify certain definitions (such as the collective interests of consumers) and the criteria for the designation of qualified entities, as well as the rules on how consumers express willingness to be represented by a qualified entity in the context of a representative action.

In its replies, the Commission explained that harmonising maximum fine levels was necessary for making coordinated enforcement action by the Member States' authorities possible in the context of the Consumer Protection Cooperation network, while at the same time ensuring the deterrent effect of those penalties. It added that the proposed rules do not require any specific share of funds to be allocated for consumer protection purposes nor the exact purpose of the allocation. It also clarified that its proposal was neutral as to how to ensure that the consumer is covered by a representative action (opt-in or opt-out), where required, and thus left the choice of approach on this issue to the Member States.

- *European Labour Authority and access to social protection*[75]

On 13 March 2018, the Commission adopted the Social Fairness package. It consists of a proposal for a Regulation establishing a European Labour Authority, and a proposal for a Council recommendation to improve access to social protection of workers and the self-employed, in order to deliver on the European Pillar of Social Rights and to support fair and well-functioning labour markets.

In 2018, nine chambers[76] submitted 11 opinions, including one reasoned opinion[77]. Most opinions referred to the proposal on the European Labour Authority.

---

[73] Austrian *Bundesrat* (two opinions) Czech *Poslanecká sněmovna*, Czech *Senát* (two opinions), German *Bundesrat* (two opinions), Italian *Senato della Repubblica*, Portuguese *Assembleia da República*, Romanian *Camera Deputaților*, Swedish *Riksdag.*

[74] From the Austrian *Bundesrat* (two reasoned opinions, one on COM(2018) 184 and the other on COM(2018) 185, and the Swedish *Riksdag* (one opinion on both COM(2018) 184 and COM(2018) 185).

[75] COM(2018) 131 and 132 of 13 March 2018.

Several chambers questioned the added value of the proposed Authority and the distribution of competences with national authorities and European agencies, emphasising the importance of respecting various national job market models and Member States' competence in the social and employment area. Some chambers expressed reservations about the collection of statistical data and the joint inspections or requested clarification as how disputes would be settled between the proposed Authority and Member States. There were also concerns that the social protection proposal, together with other measures, might put pressure on changing Member States' social protection systems.

In its replies, the Commission emphasised that the proposed measures aimed to support Member States in responding to the challenges of increasing mobility across Europe. It also clarified that the tasks of the proposed Authority were to support national authorities in operational activities on cross-border labour mobility and social security coordination matters and not to take over or duplicate their tasks. The proposed Authority would set up a mediation Board to handle disputes between Member States on all aspects of labour mobility. However, the Court of Justice would remain the only institution with the competence to interpret Union law.

The Commission explained that joint inspections would not be obligatory and would take place in line with the national law of the Member States concerned. It also assured national Parliaments that in terms of data collection and information exchange, the proposed Authority would follow the principles of the relevant interoperability framework.

On the social protection proposal, the Commission pointed out that the proposed recommendation would provide the flexibility needed to tackle the problems on access to social protection, while fully recognising the diversity of institutional set up across Member States.

- *Future of Learning*[78]

On 17 January 2018, the Commission adopted three initiatives to improve key competences and digital skills of Europeans as well as to promote common values and pupils' awareness of how the European Union works. The proposals aim to promote the development of key competences (e.g. literacy, languages, or civic and digital skills) in education systems for people of all ages, to make better use of digital technologies for teaching and learning, to develop the digital skills needed for living and working in an age of rapid digital change, and to help Member States to promote common values and to build inclusive and high quality education and training systems at all levels of education.

In 2018, five chambers[79] submitted 11 opinions on the Education Package. These opinions were supportive in general and welcomed the Commission proposals.

Some chambers reminded the Commission that the responsibility in education lies solely with the Member States, and insisted that the Union's role should not aim to go beyond legally non-binding recommendations, and/or asked for a careful examination of the European added value

---

[76] Czech *Senát* (two opinions), Spanish *Cortes Generales*, Italian *Senato della Repubblica*, Polish *Sejm*, Polish *Senat*, Portuguese *Assembleia da República* (two opinions), Romanian *Camera Deputaților*, Romanian *Senat*, Swedish *Riksdag*.

[77] From Swedish *Riksdag* on COM(2018) 131.

[78] COM(2018) 22, 23 and 24 of 17 January 2018.

[79] Czech *Poslanecká sněmovna* (three opinions), Czech *Senát*, German *Bundesrat* (three opinions), Portuguese *Assembleia da República*, Romanian *Camera Deputaților* (three opinions).

and the administrative burden the proposals might generate. Other chambers asked for a stronger link between education and the business sector and for further clarifications on the certification of digital skills.

In its replies, the Commission reassured the national Parliaments that the proposals were drafted with subsidiarity in mind and with full respect for Member States' powers in education policy. It explained that future materials to support key competence development would be developed in close cooperation with Member States, as voluntary tools supporting mutual learning, and that the Commission would neither issue qualifications itself nor validate competences under the Digital Education Action Plan.

Joint own-initiative opinions

In 2018, the Commission received two joint own-initiative opinions from national Parliaments. Both were signed by the six parliaments/chambers of the Visegrad Group countries ('V4')[80]. One concerned V4 parliamentary cooperation and the other one the future of the subsidiarity principle and Energy Union and climate policy.

5. CONTACTS, VISITS, MEETINGS AND CONFERENCES

Commission visits to / meetings with national Parliaments

As in previous years, Members of the Commission carried out in 2018 numerous visits to the national Parliaments of all Member States and to nearly all chambers. Many chambers received more than one visit by President Juncker, the First Vice-President, Vice-Presidents or Commissioners.

In addition, a high number of national Parliaments sent delegations to Brussels to meet Members of the Commission. In total, 140 visits and meetings took place in 2018 (see map below). As an integral part of the Brexit negotiating process, Chief Negotiator Michel Barnier also met the vast majority of national Parliaments during his regular country visits over the course of negotiations to inform them about the ongoing negotiations and/or their outcome. Throughout 2018, Commission officials, mostly at senior level, attended more than 80 meetings of committees of national Parliaments to discuss legislative proposals on a more technical level. In addition, Commission staff were invited to present key initiatives or important subjects such as Brexit, the Multiannual Financial Framework or the work and follow-up of the Task Force Subsidiarity at 24 meetings of the Brussels-based permanent representatives of national Parliaments. Furthermore, European Semester Officers, who are based in the Commission Representations in Member States, remained in contact with national Parliaments on the European Semester and other economic issues.

Interparliamentary meetings and conferences

Several important interparliamentary meetings and conferences took place in 2018[81], including the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European

[80] Czech *Poslanecká sněmovna*, Czech *Senát*, Hungarian *Országgyűlés*, Slovakian *Národná rada*, Polish *Sejm*, Polish *Senat.*

[81] For more details on these meetings, please 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

Union (COSAC[82]), the Conference of the Speakers of European Union Parliaments[83], the European Parliamentary Week[84], the Interparliamentary Conference on Stability, Economic Coordination and Governance[85], the Interparliamentary Conferences for the Common Foreign and Security Policy and the Common Security and Defence Policy[86], and the newly established Europol Joint Parliamentary Scrutiny Group[87].

The two 2018 COSAC Chairpersons meetings were held, respectively, in Sofia (Bulgaria) on 21-22 January 2018, and in Vienna (Austria) on 8-9 July 2018. Commission First Vice-President Frans Timmermans attended both. Delegates examined the priorities of both presidencies, the future of the European Union as well as (in Sofia) macro-regional strategies.

The LIX COSAC plenary meeting, held on 17-19 June 2018 in Sofia, discussed the achievements of the Bulgarian Presidency, the integration and connectivity of the Western Balkans, the European Pillar of Social Rights and the post-2020 cohesion policy.

The LX plenary meeting, held on 18-20 November 2018 in Vienna, was attended by Vice-President Šefčovič who discussed with delegates the current situation of the Energy Union. Delegates also examined the state of play of the Austrian Presidency, Brexit (where they expressed strong support for the Union Chief Negotiator and for the Withdrawal Agreement), Climate Policy and Energy Union and the transparency of Union law-making in the light of the upcoming European Parliamentary elections.

The Commission provided written replies to the contributions adopted by COSAC at its two plenary meetings[88].

---

[82] The COSAC is the only interparliamentary forum enshrined in the Treaties, in Protocol No 1 on the role of national Parliaments in the European Union. It usually meets on two occasions (one Chairpersons meeting, one plenary) in each Member State that holds the rotating presidency of the Council of the European Union. The Commission has observer status in the COSAC. The COSAC website at http://www.cosac.eu/en/ holds detailed reports of COSAC meetings as well as copies of the COSAC Contributions and the Commission's reply thereto. Information on COSAC can also be found on http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?type=082dbcc564afa0210164b2da9f5102f8

[83] The Conference of the Speakers of European Union Parliaments is organised annually in the Member State that holds the rotating presidency of the Council of the European Union during the second half of the preceding year. The 2018 meeting took place in Tallinn on 23 and 24 April 2018. More information: http://www.ipex.eu/IPEXL-WEB/euspeakers/getspeakers.do?id=082dbcc55d1a225d015d1bfe7cce00ed

[84] The European Parliamentary week, held at the European Parliament on 19 and 20 February 2018, was addressed by Vice-President Dombrovskis and Commissioners Oettinger and Thyssen. More information: http://www.europarl.europa.eu/relnatparl/en/high-level-conferences/european-parliamentary-week.html

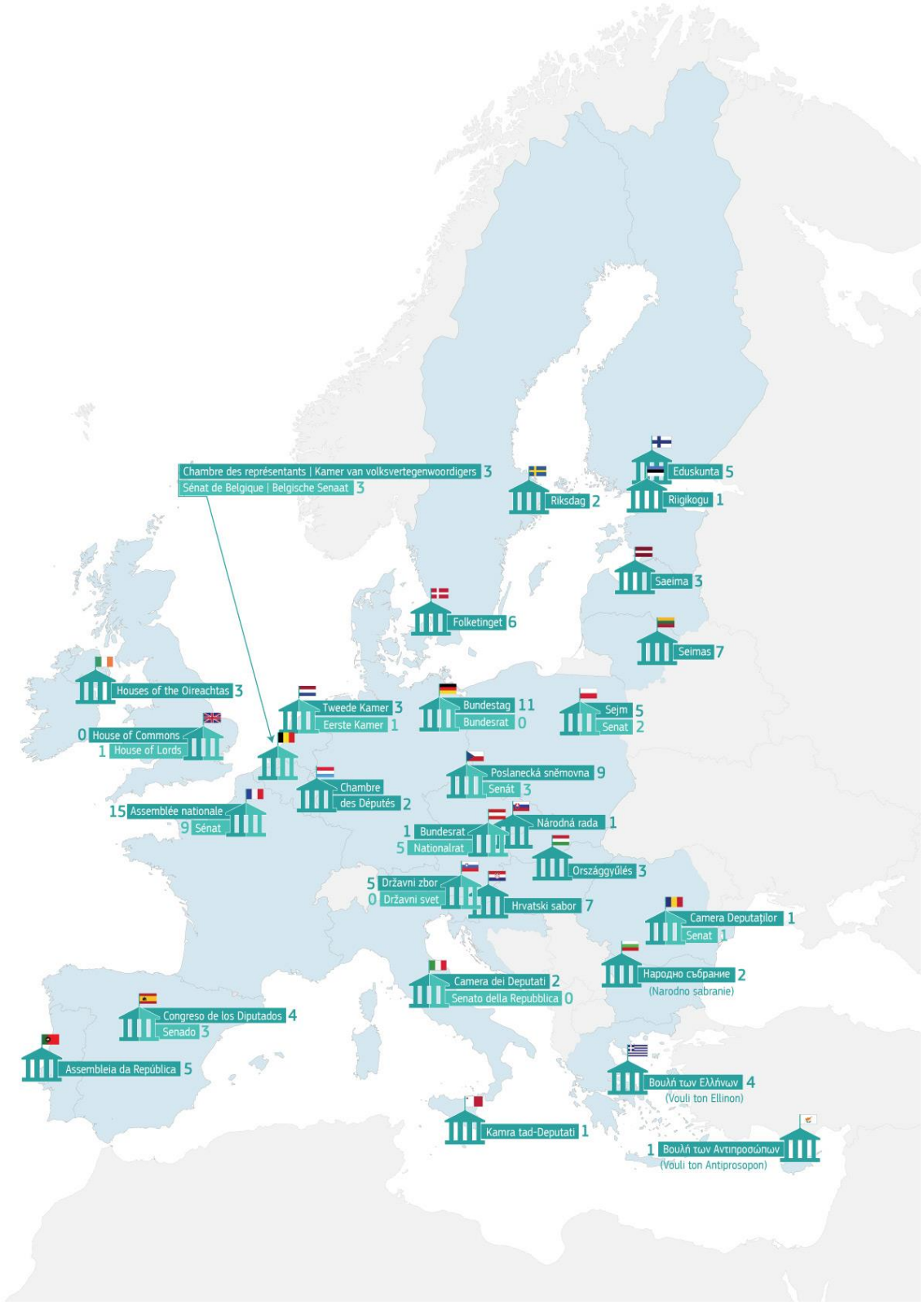
[85] This conference, held on 17 and 18 September 2018 in Vienna, was addressed by Commissioner Moscovici. More information: http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc55f38350b015f3958960f01ee.

[86] Two conferences were held respectively on 15 to 17 February 2018 in Sofia and on 11 and 12 October 2018 in Vienna. High Representative/Vice-President Mogherini attended both of them. More information: http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc55f38350b015f394a4eb201ca and http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?id=082dbcc55f38350b015f394ad04c01cc

[87] The Europol Joint Parliamentary Scrutiny Group was established in 2018 and met twice, in Sofia on 18-19 March with the participation of Commissioners Gabriel and King and in Brussels on 24-25 September with the participation of Commissioner King.

[88] http://www.ipex.eu/IPEXL-WEB/conference/getconference.do?type=082dbcc564afa0210164b2da9f5102f8

Number of visits to and meetings with national Parliaments from Members of the Commission in 2018 (total for all Member States: 140)



6. THE ROLE OF REGIONAL PARLIAMENTS

Regional Parliaments indirectly contribute to the Commission's relations with national Parliaments. Under Protocol 2 to the Treaties, when carrying out the subsidiarity check of draft European Union laws in view of issuing reasoned opinions, national Parliaments shall consult, where appropriate, regional parliaments with legislative powers[89]. Members of regional Parliaments are also represented in the Committee of the Regions, which carries out monitoring activities through the Subsidiarity Monitoring Network and its online platform REGPEX, which is designed to support the participation of the Parliaments of regions with legislative powers in the early warning mechanism on subsidiarity[90].

In 2018, 95 contributions were submitted by REGPEX partners, 75 of which came from regional Parliaments. The most active regional Parliaments were the Emilia Romagna Regional Legislative Assembly (21 contributions), the Bavarian State Parliament (20 contributions) and the Thuringia State Parliament (10 contributions). This shows a sharp increase of activity compared to 2017, where only 30 contributions from regional Parliaments (out of 66 contributions from REGPEX partners) had been registered in REGPEX. The Commission proposals that received the highest number of comments from regional Parliaments concerned a Union Civil Protection Mechanism, the revision of the Drinking Water Directive[91], the minimum requirements for water reuse and the health technology assessment[92].

Although there is no explicit provision in the Treaties for direct interaction between the Commission and regional Parliaments, several regional Parliaments also submitted their opinions directly to the Commission in 2018. They commented not only on subsidiarity but also on policy aspects of various Commission proposals. The Commission took note of all aspects raised and generally addressed them in its replies to the regional Parliaments.

Reflecting on how to better involve regional and local authorities in the preparation and the follow-up of Union policies was one of the tasks of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' (see Section 2.1). Several regional parliaments submitted contributions with meaningful proposals to the Task Force, including during its public hearing, as well as held discussions on these matters in the Subsidiarity Working Group of the Conference of European Regional Legislative Assemblies (CALRE). The Task Force encouraged national Parliaments, regional Parliaments and the Committee of the Regions to improve their communication, including by using their respective IT tools more effectively, to ensure that the legislative procedure and the subsidiarity control mechanism reflect better their concerns.

President Juncker met representatives of a number of regional Governments and Parliaments during the year, including Flanders, Wallonia (Belgium), Bavaria, Rhineland-Palatinate (Germany) and Lower Austria (Austria). Other Members of the Commission had similar meetings.

---

89 Article 6, first paragraph, of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality.

90 For more details on the subsidiarity control related activity of the Committee of the Regions, see section 2.4.

91 Which also triggered four reasoned opinions from national Parliaments (see section 3.2).

92 COM(2017) 772, COM(2017) 753, COM(2018) 337 and COM(2018) 51 respectively.

7. CONCLUSION

2018 saw a significant decrease in the overall number of **reasoned opinions** received by the Commission (37 compared to 52 in 2017 and 65 in 2016). This was against the background of a more or less stable number of legislative proposals presented by the Commission and an almost identical overall number of opinions received compared to 2017. Moreover, the reasoned opinions received covered various policy areas, and no single proposal triggered more than four reasoned opinions from national Parliaments. This could be the result of the Commission applying a well-tested and even reinforced Better Regulation Agenda and of its commitment to integrating the principles of subsidiarity and proportionality at all stages of policy-making, to evaluating existing policy frameworks before presenting legislative revisions and to initiating action at European level only if its added value is clear.

Subsidiarity control and monitoring was also a priority for the European Parliament and the Committee of the Regions, and European Council conclusions emphasised the need for a smart application of better regulation principles, including subsidiarity and proportionality.

The **Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently'** carried out an interinstitutional reflection on how to ensure and improve the application of the principles of subsidiarity and proportionality. Its final report recommends follow-up action by the institutions, aimed at better involving national Parliaments, as well as regional and local authorities, in the preparation and the follow-up of Union legislation and policies. The Commission reacted to the work of the Task Force in two communications, in October 2018 and April 2019. It presented a series of follow-up actions, such as the production of aggregated replies to reasoned opinions, and has been taking these actions forward in 2019, including as part of its reviewed Better Regulation agenda.

The number of opinions submitted by national Parliaments as part of the **political dialogue** remained high in 2018 (569 opinions), around the same as in 2017 (576) although, even more than in previous years, a few very active chambers accounted for a large part of these opinions. The relatively small proportion of reasoned opinions (6.5 %) and, conversely, the relatively high proportion of own-initiative opinions or opinions on non-legislative initiatives (38 %) compared to the total number of opinions submitted show national Parliaments' continued interest in engaging on matters that go beyond the subsidiarity aspects of Commission initiatives and in providing valuable input as early as possible on the content of these initiatives. This reflects the national Parliaments' wish to be active in the European decision-making process in addition to influencing and controlling the European positions of their governments.

Following up on the commitment taken from the outset by this Commission to develop its relations with national Parliaments, Members of the Commission also continued to have regular debates with national Parliaments in 2018. This reflects how much European institutions value the role of national Parliaments, which have a crucial role to play in bringing the Union closer to its citizens, to make it more transparent and accessible.