



**2023/2079(INI)**

20.9.2023

# **OPINION**

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs

on European Union regulatory fitness and subsidiarity and proportionality –  
report on Better Law Making covering 2020, 2021 and 2022  
(2023/2079(INI))

Rapporteur for opinion: Jacek Saryusz-Wolski

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## SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes that the number of reasoned opinions received from national parliaments in 2020 amounted to 13<sup>1</sup> out of 134 submissions formally received by Parliament under Protocol No 2 on the application of the principles of subsidiarity and proportionality<sup>2</sup>; notes the increase in the submission of reasoned opinions in 2021 to 24 out of 227 submissions; observes that the total number of opinions received also rose from 255 in 2020 to 360 in 2021, reflecting the increased number of proposals presented by the Commission; stresses the need to evaluate the differences in approach among the Member States and underlines the need to encourage the wider participation of all national parliaments in the decision-making process;
2. Believes that European legislation should be fit for purpose, proportionate, clear, transparent, future-proof and comprehensive in order to effectively benefit citizens and stakeholders;
3. Recalls the utmost importance of parliamentary scrutiny in the Union's legislative process and reiterates its call for Parliament's right to initiate policy proposals;
4. Underlines that better law-making is a centrepiece of the 'ever closer Union' and an objective shared by all EU institutions; reiterates that regulatory fitness, subsidiarity and proportionality, as well as transparency, accountability and cooperation between the institutions, Member States, citizens and stakeholders, ensuring full respect of all fundamental European values, are essential prerequisites for EU democracy;
5. Underlines the role that national parliaments play in shaping EU policies and legislation, as outlined in Protocol No 1 of the Treaty on the Functioning of the European Union; calls on the Commission and the co-legislators to support the active engagement of national parliaments in the EU legislative process; considers that the principles of subsidiarity and proportionality (Article 5 of the Treaty on European Union) should remain guiding principles in the development of EU and Member States' policies in areas of shared competence, focusing EU efforts on significant issues with EU added value that require collective action; reiterates the need to avoid unnecessary administrative burdens when designing, transposing and implementing EU acts in order to keep the burden for citizens and businesses, especially small and medium-sized enterprises (SMEs), as low as possible, while ensuring that the objectives of the legislation are met;
6. Calls for the 'one in, one out' approach to be applied as it plays an important role in supporting efforts to simplify EU law and reduce red tape in order to support the

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<sup>1</sup> [See for methodological differences in counting footnote 50 on page 9 of the Commission Annual report for 2020 \(COM\(2021\)0417\). The Commission counts 9 reasoned opinions for statistical purposes.](#)

<sup>2</sup> [OJ C 115, 9.5.2008, p. 206.](#)

recovery and resilience of the EU; calls on the Commission to consider best practices at national level, including a reduction of the regulatory burden affecting SMEs by at least 30 % in order to decrease cost pressures and promote competitiveness;

7. Underlines the importance of fully using the existing instruments for strengthening the role of participatory democracy in the Union's legislative process, such as the European Citizens' Initiative, the right to petition Parliament, as outlined in Article 44 of the Charter of Fundamental Rights of the European Union, and the further implementation of Citizens' Assemblies;
8. Calls for providing for sufficient resources with the Parliament services entitled to support the Members' capacity to improve their function as co-legislator, such as Parliament's Directorate for Impact Assessment and European Added Value;
9. Calls for improved comprehensive impact assessments with a special focus on SMEs, including a binding SME test within the impact assessment phase to fully assess the economic impact, including compliance costs of legislative proposals on SMEs; calls for the test to be updated throughout the whole legislative process; recommends a comprehensive review of the SME test including the use of appropriate tools to facilitate SME input, the regular revision of impact assessments and differentiation between different SME size categories; draws attention to the importance of solid impact assessments that take the competitiveness of European businesses into account;
10. Recalls the experiences that were gained from the COVID-19 pandemic, which resulted in the need for coordinated action to ensure an effective public health response; underlines that close coordination between the institutions and Member States would be needed to create an utmost European added value on public health matters for all EU citizens;
11. Encourages the Commission and the Member States to streamline procedures and implement the 'once-only' and 'digital by default' principles, thereby facilitating administrative processes for citizens and businesses alike;
12. Welcomes the adoption, in November 2021, of new better regulation guidelines and a new toolbox, which was updated in July 2023 and also includes the production of subsidiarity assessment grids that are currently limited to proposals for politically sensitive and important initiatives accompanied by an impact assessment; believes that the Commission's better regulation toolbox should be amended to more prominently evaluate the impact of the Commission's proposals on future generations; highlights that the toolbox does not provide a clear definition of the European Green Deal's 'do no harm' principle, leaving it up to the Commission's services to determine if a policy option would cause harm; regrets the fact that there is a risk of the rule being inconsistently implemented without a clear definition;
13. Welcomes the Commission's integration of strategic foresight and the mainstreaming of sustainable development goals that reflect the need to anticipate future challenges in the policymaking process, and to ensure that all legislative proposals contribute to the 2030 Agenda for Sustainable Development;

14. Recalls that the Interinstitutional Agreement on Better Law-Making<sup>3</sup> stipulates that the Commission should outline, in its explanatory memoranda, how its proposed measures are justified in the light of the principles of subsidiarity and proportionality; points out that this requires that, as a general rule, every Commission proposal should be duly accompanied by an impact assessment that evaluates the initiative's compliance with the principles of subsidiarity and proportionality, as well as the potential generation of European added value;
15. Points out that the structural consultation of stakeholders on all new EU policy initiatives is critical to assess their proportionality; welcomes the Commission's efforts to consolidate the consultation process; believes that the public consultation process for strategic initiatives can be further strengthened, in particular to improve outreach to under-represented groups, such as SMEs, young people and minorities;
16. Urges the Commission to provide comprehensive training and resources to national parliaments, enabling them to better understand and evaluate the implications of EU proposals, thereby promoting a more informed and constructive debate at national level;
17. Stresses the need for greater public awareness and understanding of the EU's legislative processes; proposes the launch of educational campaigns and initiatives aimed at informing the public about the principles of subsidiarity and proportionality and the role of national parliaments in shaping EU decisions and the importance of their active participation;
18. Reiterates its call for the establishment of a permanent participatory mechanism for citizens in the lead-up to the adoption of the Commission's annual work programme and calls, therefore, to revise the Interinstitutional Agreement on Better Law-Making;
19. Is concerned about the persistent lack of transparency in the Council's decision-making process and the practice of over-classifying documents and applying an excessively broad interpretation of the exceptions included under Regulation (EC) 1049/2001<sup>4</sup>; calls on the three institutions to ensure a forward-looking and consistent application of the abovementioned Regulation, allowing appropriate access to registered documents and to all types of communications, provided that they concern a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;
20. Notes, with concern, the European Council's practice of 'tasking the Council and the Commission' which goes beyond the role of strategic guidance assigned to it by the Treaties, and which is therefore contrary to both the words and spirit of the Treaties; considers it necessary to respect the division of competences as defined in the Treaties in order to ensure the independence and good functioning of the legislative process;
21. Notes that, in 2020 and 2021, no Commission proposals reached the threshold of four countries to trigger an aggregate response from the Commission to the reasoned opinions from national parliaments; invites and encourages national and regional parliaments to prioritise resources for subsidiarity and proportionality checks in order to

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<sup>3</sup> [Interinstitutional agreement of 13 April 2016 on Better Law-Making, OJ L 123, 12.5.2016, p. 1.](#)

<sup>4</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

strengthen their scrutiny of EU decision-making processes; calls, at the same time, for a review of the relevant Treaty provisions to strengthen the ‘yellow card’ procedure and to discuss the possibility of a ‘green card’ mechanism, in order to enable national parliaments to actively engage in and proactively contribute to the EU decision-making process;

22. Encourages national parliaments to systematically include the reasoned opinions of regional parliaments with legislative powers in their reasoned final opinions that are sent to the Presidents of Parliament, the Council and the Commission, especially when regional exclusive competences may be affected;
23. Encourages the Commission to have a more active engagement with national and regional parliaments in consultations at the different stages of policy preparation; encourages the Commission, furthermore, to take a more active role in its direct interaction with regional parliaments;
24. Recommends to better take into account the role played by the European Committee of the Regions and the European Economic and Social Committee in the legislative framework as representatives of local and regional authorities and organised civil society; reaffirms the need to reform the European Committee of the Regions in order to maximise its impact in the law-making process;
25. Notes that, in 2020, members of the Commission had 101 visits to national parliaments or meetings with national parliament delegations and that in 2021, this number rose to 130; strongly encourages the Commission to further increase its participation in debates on EU proposals in national parliaments;
26. Reiterates that an effective enforcement of EU legislation is necessary to ensure that the principles of proportionality and subsidiarity are observed in full; points out that disproportionate regulatory burdens for citizens and businesses can often be attributed to Member State compliance issues; calls on the Commission to enforce EU legislation in full and without undue delay and to therefore leverage all existing tools; stresses that the Commission’s enforcement policy must be more predictable and transparent and reinforce legal certainty for all stakeholders;
27. Believes that, within the Union’s multi-level governance structure, the transparency of the legislative process is of the utmost importance to ensure public accountability and the legitimacy of the decision-making process; underlines the importance of the EU transparency register in this regard and calls on the institutions to further strengthen its usage; reiterates its call for an independent ethics body to ensure the consistent and full implementation of ethics standards across the EU institutions;
28. Considers that, in cases where Parliament exercises the right of initiative, such as on regulations relating to its own composition, the election of its Members, the general conditions for the exercise of its functions, the statute of the Ombudsman as well as the constitution of temporary committees of inquiry, it is necessary to contemplate measures in a future Interinstitutional Agreement that would prevent the Council from refusing to negotiate with Parliament;
29. Recommends that the legislative process arising from the right of legislative initiative

conferred on Parliament by the Treaties must include a request for the establishment of a legislative calendar for the initiatives concerned, similarly as with the ordinary legislative procedure; underlines, moreover, that such a special legislative procedure must respect the provisions of the Interinstitutional Agreement concerning the institutional obligation of all three institutions to negotiate;

30. Notes that current challenges, including the supply of energy and rapid changes in the industrial landscape, require new methods to improve regulatory cooperation; calls, therefore, on the Member States to consider the impact of their national regulations under these constraints and to foster any potential for stronger mutual coordination at EU level.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	20.9.2023
<b>Result of final vote</b>	+: 23 -: 0 0: 1
<b>Members present for the final vote</b>	Włodzimierz Cimoszewicz, Ana Collado Jiménez, Gwendoline Delbos-Corfield, Salvatore De Meo, Daniel Freund, Charles Goerens, Sandro Gozi, Zdzisław Krasnodębski, Jaak Madison, Victor Negrescu, Max Orville, Paulo Rangel, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Loránt Vincze, Rainer Wieland
<b>Substitutes present for the final vote</b>	François Alfonsi, Vladimír Bilčík, Mercedes Bresso, Pascal Durand, Alin Mituța
<b>Substitutes under Rule 209(7) present for the final vote</b>	Sara Skyttedal



## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

23	+
ECR	Zdzisław Krasnodębski, Jacek Saryusz-Wolski
PPE	Vladimír Bilčík, Ana Collado Jiménez, Salvatore De Meo, Paulo Rangel, Sara Skyttedal, Loránt Vincze, Rainer Wieland
Renew	Charles Goerens, Sandro Gozi, Alin Mituța, Max Orville
S&D	Mercedes Bresso, Włodzimierz Cimoszewicz, Pascal Durand, Victor Negrescu, Domènec Ruiz Devesa, Pedro Silva Pereira
The Left	Helmut Scholz
Verts/ALE	François Alfonsi, Gwendoline Delbos-Corfield, Daniel Freund

0	-

1	0
ID	Jaak Madison

Key to symbols:

+ : in favour

- : against

0 : abstention