

# Statement by the Committee on the Constitution 2015/16:KU27

## Subsidiarity check of the European Parliament's proposal amending the electoral law of the European Union

### APPENDIX 2

#### Reasoned opinion of the Riksdag

The Riksdag has examined the European Parliament's draft P8 TA(2015)0395 Proposal for a decision by the Council adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage.

First, the Committee notes that it is a question of such a draft legislative act that is covered by the provisions regarding subsidiarity under Article 5 of the Treaty on European Union and in the Protocol on the application of the principles of subsidiarity and proportionality.

The Riksdag notes that the European Parliament forwarded its draft legislative act to the Riksdag on 10 December 2015. In this connection it was stated that the European Parliament, on the basis of Article 223 of the Treaty on the Functioning of the European Union, had adopted a draft legislative act with a proposal for a decision by the Council adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage. When the draft was forwarded to the Riksdag, there was no information that all language versions of the draft legislative act had been sent to the national parliaments and Chambers of these parliaments in the member states. Nor was there any information to state that the procedure referred to in the Protocol on the application of the principles of subsidiarity and proportionality had started or that the Riksdag had the opportunity, within eight weeks, to submit a reasoned opinion on the grounds that the Riksdag considers that the current draft is not compatible with the principle of subsidiarity. When the Commission and the Council forward their draft legislative acts, they are accompanied by such information in accordance with routines communicated to the national parliaments.

The absence of information of this kind can lead to uncertainty among the national parliaments as to whether the draft is covered by the provisions on subsidiarity checks under the Treaty, and from what date the eight-week period for submitting a reasoned opinion is to be calculated. In the opinion of the Riksdag, it would be in good order if all legislative acts that are sent to the national parliaments, regardless of from which institution, were accompanied by such information. In June 2010, the European Parliament announced that it intended to take into consideration the routines that the national parliaments had drawn up together with the Commission and the Council.

Furthermore, the Riksdag notes that the draft legislative act contains no justification with regard to the principles of subsidiarity and proportionality. However, the European Parliament's resolution does contain certain justifications with regard to these principles. These justifications are nevertheless very generally worded and do not explain why the objectives of the proposals cannot be achieved by means of regulation at member state level. On the whole, the Riksdag considers that the proposal does not meet the requirements under Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality.

The lack of clear information to the national parliaments and shortcomings as regards justification may lead to the undermining of the national parliaments' right to objections, which in the long term would weaken the democratic decision-making processes in the EU.

The Riksdag considers that the underlying idea in the current regulation in the electoral law that the procedure for elections to the European Parliament should essentially follow the rules that apply to national elections is in good order. The Riksdag considers that the procedures for implementation of the elections must also continue to be permitted to differ in the various member states. In order to uphold faith in democracy and in election procedures, in the opinion of the Riksdag, it is important that the forms for implementing elections are well-known by the citizens, and thus that they contribute to maintaining confidence in election procedures.

The proposals regarding a common day and time for concluding elections to the European Parliament and measures to avoid double voting are of such a nature that the objectives of the measures can be better achieved by means of legislation at Union level. The Riksdag considers that these aspects of the proposal are compatible with the principle of subsidiarity. However, the Riksdag considers that the proposal concerning measures to avoid double voting entail unnecessarily detailed regulation at Union level, and would lead to an excessive administrative burden.

As regards the other proposals, the Riksdag considers that they conflict with the principle of subsidiarity. The proposals regarding changes to the distribution of roles between the European Parliament and the Council when determining the election day and the measures to implement the electoral act go beyond what is necessary to achieve the desired objectives. The same applies to the proposal for a new common constituency and nomination of candidates to the position of President of the European Commission. As regards the other proposals, the Riksdag considers that the objectives of the planned measures can be better achieved by the member states. The introduction of such regulation for the procedures for elections to the European Parliament could, in the opinion of the Riksdag, have the reverse effect and could lead to a loss of public confidence and lower election turnouts. In addition, several of these proposals are also of such a nature that they can be questioned from the perspective of the proportionality criterion which is part of an examination of the application of the principle of subsidiarity.

The Riksdag would especially like to stress that the proposals concerning an obligation for political parties participating in elections to the European Parliament to observe democratic procedures and transparency in selecting their candidates for those elections and that the list of candidates for election to the European Parliament shall ensure gender equality entail regulation of the political parties' inner workings. The Riksdag does not consider that the political parties' inner workings should be regulated at Union level. In fact, one can question such regulation, even at the national level.

Furthermore, several of the proposals seem difficult to reconcile with regulations relating to freedom of the press and freedom of expression in the Swedish Constitution. This applies to the proposals on an obligation to reproduce logos on ballot papers, the contents of national parties' election campaign materials and how election materials should be published. It also applies to the proposal to ban the publication of exit poll-based forecasts before a certain time. Provisions on freedom of the press and freedom of expression are fundamental in a democratic society. Limiting these freedoms by means of legislation at Union level on election procedures would appear, on the basis of the perspectives the Riksdag has to consider, directly unsuitable.