

Martin Schulz
President of the European Parliament
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Belgium

The Hague, 9 February 2016

Reasoned Opinion (subsidiarity) on the proposal on the reform of the electoral law of the European Union (2015/2035(INL))

Dear Mr Schulz,

Pursuant to the relevant procedure, the House of Representatives of the States-General has assessed the conformity of the abovementioned legislative proposal with the principle of subsidiarity. To this end, the House of Representatives applied Article 5 TEU and the Second Protocol to the Treaty of Lisbon on the Application of the Principles of Subsidiarity and Proportionality.

Through this letter, I advise you of the outcome of the assessment of the House of Representatives. Identical letters were sent to the Council, the Commission and the Dutch Government.

The Majority of the House has determined that the proposal to reform the electoral act goes beyond the legal basis and also does not comply with the principle of subsidiarity. The grounds on which this assessment is based, are as follows.

Although the organisation of the EP elections naturally involves certain transnational aspects, the House finds that the organisation of elections, including the European elections, is primarily a competence of the Member States. Governmental tradition, political culture and national views on representation and democracy have an important role in the organisation of elections. Far-reaching harmonization of the organisation, as envisioned by the present proposal, does not take this sufficiently into account.

The House of Representatives notes that the legal basis provided by Article 223 TFEU only allocates a competence (shared by the Union and Member States) for legislation which is *necessary* for the organisation of the elections of the European Parliament. In contrast, the present proposal contains numerous measures that go beyond what is necessary for organisational purposes. The recitals indicate that this proposal *inter alia* aims to enhance the democratic legitimacy of the EU, the concept of Union citizenship and gender equality. The proposal does not specify how these goals relate to the legal basis of Article 223 TFEU. Rather, the relevant provisions appear to relate to the realisation of other treaty and political goals.¹ Those provisions offer no specific legal basis for a legislative proposal by the Union in the field of elections, not for the European Parliament in any event.

¹ Resolution 2015/0035 refers to a number of general principles of the treaties as the basis for the proposal to reform the Electoral. These are article 9 (Union citizenship), 10 (democratic nature of the EU), 14 (role of the European Parliament), 17 (procedure to appoint the EC) TEU and 22 (voting rights of Union citizens) and 225 (right of request EP) TFEU.

The House of Representatives thus finds that the present proposal exceeds the legal basis of Article 223 TFEU.

With regard to the subsidiarity of the proposal, the House of Representatives is not convinced that the deadline for the establishment of lists of candidates should be harmonised. This interferes deeply with party and national procedures, while no definite advantage can be discerned. This applies equally to the obligation for political parties to establish their lists in accordance with democratic and transparent procedures, while safeguarding gender equality. The House finds that the autonomy of political parties and the constitutional right to freedom of association are unduly interfered with. The House notes that there are many different views on these issues on the national level and that it is certainly not for the EU to decide on them.

For historical reasons, elections for the European Parliament take place in the Netherlands on Thursdays and not on Sundays. The House finds that relocation of that day is not necessary for the orderly conduct of the elections. The House notes that in past 40 years, no insurmountable problems occurred regarding the day of the elections. The related ban on exit polls is an unjustified interference with the freedom of press. The House is also concerned these measures threaten the public counting of ballots. This would seriously undermine the democratic rule of law.

The draft legislative act requires Member States to interfere with the visibility of the elections and the campaigns of political parties. Moreover, logos and names of European political parties should be equally visible on ballots as those of national parties, according to the proposal. The House finds that political parties should determine their campaign strategy independently and that the government has no role to play.

The House also finds that the election date should be established by the Council. After all, the Member States are charged with the organisation of the elections. Moreover, the House finds that the Member States are in the best position to design their mutual contacts. There is no need for European rules on contact authorities or a European elections authority.

An extension of the ban on double mandates to membership of regional parliaments is unwanted. The same goes for an electoral threshold. Member States have different traditions in this field and further interference by the EU is not necessitated by any urgent matter. The same applies to electronic voting and voting from third countries. Although this would enhance uniformity on a European level, it creates diversification of the various national electoral processes in a single Member state and confusion among the electorate, without a European problem being solved here.

Given the fact that the organisation of the elections touches upon the core of national sovereignty, the House finds that delegated acts should be decided upon with unanimity in the Council. Precisely so that it can be determined whether new proposals are truly necessary.

The House notes the following with regard to the optional provisions and recommendations. Firstly, the proposal recommends to consider harmonizing the age of suffrage to 16 years. The House finds that political agreement on this issue is far from certain and that a national discussion should be held first. In addition, the House finds a joint constituency for 'Spitzen-candidates' to be unnecessary.

Finally, the House of Representatives does not share the underlying analysis of the proposal. The EP believes that the limited public attention for the European elections is caused by the national character of the elections. It is precisely at the national level that it can best be determined how and in what way the European elections should be organized. The proposal shows little feeling with the Dutch citizens and the importance that is attached in our country to open and free elections in a representative democracy on the right moment in a balanced manner.

For the reasons given above, the proposal by the European Parliament does not comply with the principle of subsidiarity.

Your sincerely,

Khadija Arib
Speaker of the House of Representatives