

The President of the European Commission  
Mr Jean-Claude Juncker  
B-1049 Brussels  
Belgium

*date* 25 January 2017  
*subject* Reasoned opinion on the subsidiarity of the proposal of the European Parliament and the Council to amend Directive 2010/31/EU on the energy performance of buildings (COM/2016/0765)  
*reference* 160540.01u

*Courtesy translation*  
(only the text in Dutch is official)

Dear Mr Juncker,

The Senate of the States-General has reviewed the above proposal in light of the principle of subsidiarity in accordance with the prescribed procedure, applying Article 5 of the EU Treaty and Protocol 2 of the Treaty of Lisbon concerning the application of the principles of subsidiarity and proportionality.

This letter serves to inform you of the opinion of the Senate of the States-General. Identical copies have been sent to the Council, the European Parliament and the Dutch government.

**Position statement**

In the opinion of the Senate, the above proposal does not comply with the principle of subsidiarity. It is appropriate for the European Union to issue guidance on CO<sub>2</sub> reductions, however in this instance it concerns a joint competence of the EU and the Member State. Therefore, the manner in which the objectives are met should be left to the discretion of the Member States. Although European cooperation in the area of energy savings can be beneficial, the Senate firmly believes that the implementation of the applicable measures must allow for national appreciation in order to take account of local conditions and developments. In this light, it is the view of the Senate that a detailed instruction on the implementation of the measures is unnecessary and undesirable. For example, the stipulation of the required number of parking spaces with charging facilities is a rigid measure that leaves no room for national interpretation. Moreover, the proposal introduces a new label, which the European Commission may implement at its discretion, but which also brings with it many uncertainties, while its costs and benefits are as yet unclear.

This subsidiarity test is all the more significant because the respective Member States have already developed long-term policies and, over the past few years, have translated this into covenants and legislation. It is not in the interests of the CO<sub>2</sub> reduction targets to undermine – or

even partially dismantle – the assurances that this long-term policy currently offers the public and business community.

### **Explanation**

The Dutch government's National Energy Agreement is a comprehensive programme that has been designed to meet the European energy saving and CO<sub>2</sub> reduction targets. This agreement was signed in September 2013 by more than forty organizations. Its targets are energy savings of 100 petajoules by 2020, an increase in the share of renewables to 14% in 2020 and 16% in 2023, and 15,000 new full-time jobs. It contains agreements on, among others, energy efficiency in the built environment, energy conservation in industry, upscaling renewables, local energy generation, the energy transport network, emissions trading schemes, mobility and transport. Where parties fail to comply with the Energy Agreement, such as meeting energy efficiency targets for social housing, this cabinet does not hesitate to implement additional regulations.

The aforementioned proposals of the European Commission are intended to achieve the same targets. However, the European Commission translates these targets into highly detailed provisions, such as the number of charging points for electric vehicles, a 'smartness indicator', compliance with energy label provisions, and the provision on energy performance of technical building systems.

The Senate believes it is against European interests to put the National Energy Agreement – that is widely supported by government authorities, the business community and social organisations – at risk. Various provisions that are set out in the proposal have been in place in the Netherlands for some time already, but here they are the result of agreements and covenants, and not the rigid regulation that the European Commission is proposing.

Yours sincerely,

The President of the Senate of the States General

Ankie Broekers-Knol