



Voorzitter

Eerste Kamer der Staten-Generaal

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betreft Reasoned opinion (subsidiarity principle) on the EU proposal for a regulation establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)80)

ons kenmerk 166685.02U

Dear Ms Von der Leyen,

The Senate of the States General has checked to ascertain whether the proposal for a regulation establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)80)¹ complies with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union (TEU) and Protocol No 2 to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality.

I am writing this letter to inform you of the opinion of the Senate of the States General.

A majority of the Senate believes that the proposal for a European Climate Law does not comply, in parts, with the principles of subsidiarity and proportionality. This majority of the Senate takes the following view.

- The pursuit of climate neutrality cannot be achieved other than by taking drastic measures that have a substantial economic and social impact. Obtaining sufficient social support for these measures is a prerequisite. Needless to say, generating sufficient support is easier when the decisions are made at the most appropriate level of government, as close as possible to the citizen.
- The legal basis of the proposal for a European Climate Law is Article 192 (1) of the Treaty on the Functioning of the European Union (TFEU). This is a limited legal basis. Conceivably, policy measures may have to be taken that affect spatial planning, water management, the energy policy and so forth. In accordance with Article 192 (2) of the TFEU, this is decided by unanimity and not by majority, as under paragraph 1. It follows that in the case of this part of the proposal for a European Climate Law, the legal basis is

¹ See electronic dossier number E200007 at www.europapoor.nl.



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not in proportion to the proposal's substantive importance and scope. Further reasons should therefore be provided about this.

- As regards the delegated acts in accordance with Article 290 of the TFEU, there must be an explicit and clearly defined delegation of power. This is not yet the case in the proposal that has been presented, and would in fact be virtually impossible at this stage of the process. The explanation given here is therefore premature and, as indicated above, would also be undesirable in the context of obtaining the necessary social support. Respecting normal decision-making procedures at European level, through the Council and the European Parliament, and at national level, through regular consultations between governments and national parliaments, remains essential to such drastic policies.

On these grounds, the Senate of the States General believes that the proposal for a European Climate Law is, in parts, contrary to the principles of subsidiarity and proportionality.

As notified to the European Commission by the chair of the standing committee for Economic Affairs and Climate Policy / Agriculture, Nature and Food Quality by letter² of 4 May, the current special circumstances affecting meetings as a result of the COVID-19 crisis made it impossible for the Senate to complete this subsidiarity opinion and formalise the decision-making process by the deadline of 5 May 2020. Nonetheless, the Senate wishes to share its opinion with the European Commission and, despite the delay in submitting its reasoned opinion, looks forward to hearing the European Commission's response, which, as it has indicated, will be made public.³

Identical letters have been sent to the European Parliament, the Council and the Dutch government.

Yours sincerely,

Professor J.A. Bruijn
President of the Senate of the States General

² Parliamentary Papers I 2019/2020, 35448, B

³ Letter from Vice-President Šefčovič of 8 April 2020, (22112, HZ)