

Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

concerning

a Proposed Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage (“the proposal”)¹⁸

1. The UK House of Commons firstly notes that Protocol No 2 on the application of the principles of subsidiarity and proportionality (the Protocol) applies to the proposal since it is an “initiative from the European Parliament”¹⁹ and a “draft legislative act”.²⁰ The European Parliament is therefore subject to the obligations set out in Articles 1, 4, 5 and 7 of the Protocol.

2. The House of Commons considers that the proposal fails to meet the requirements of Article 5(3) TEU²¹ and the Protocol for the following reasons:

a) It fails to comply with essential procedural requirements set out in Article 5 of the Protocol. This states that:

“any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal’s financial impact, and in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative, and whenever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.”

The European Parliament fails to provide this detailed statement within the draft legislative act itself as this does not contain any substantive recitals.

¹⁸ Council document: Unnumbered; European Parliament document: 2015/0907/APP.

¹⁹ Article 3.

²⁰ This proposal is based on Article 223 (1) TFEU, which specifies a “special legislative procedure” and does not fall within the exclusive competence of the Union.

²¹ Article 5(3) TEU provides that “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

- b) As the Resolution²² of the European Parliament and the “European Added Value Assessment on the Reform of the Electoral Law of the European Union”²³ are not included in the draft legislative act, the House of Commons does not consider that they meet the requirements of Article 5 of the Protocol. In any event, the substantiation they provide is insufficient to enable national Parliaments to assess compliance of the proposal with subsidiarity principle. This is because:
- i) The Resolution is mostly of a general and theoretical nature and not all of the individual proposals made in the draft legislative act have been specifically justified, either on a quantitative or qualitative basis (for example, ineligibility of members of regional parliaments and assemblies with legislative powers to become MEPs, replacing unanimity by QMV for implementing measures and posting of election materials to voters); and
 - ii) The “European Added Value Assessment does not provide sufficient substantiation. For example, apart from some very broad consideration of cost implications for Member States to implement electronic voting, the document does not contain other “*assessment of the proposal’s financial impact*”. Page 13 of the Assessment makes clear that such assessment of “feasibility” that is provided, is focussed on assessing how proposals will meet the unanimity and ratification requirement of Member States and the diversity of national electoral law on EP elections, despite the recognition that the measures could have “to varying degrees, have impacts on Member States, national political parties as well as citizens”. So there is little assessment of the burdens that will be placed on national electoral bodies as a result of measures proposed.²⁴ Furthermore, the document does not address all the measures in the proposal (in particular, those on a common deadline for the electoral roll– Article 1(4) of the Proposal and ineligibility of members of regional parliaments and assemblies to be MEPs – Article 1(8) of the Proposal.). Yet it does address measures that are not included in the proposal (common voting day and minimum voting age of 16). In any case, it is not linguistically accessible to all national parliaments²⁵ nor it is integrated into the more linguistically accessible Resolution. The House sets out further examples of deficiencies in the European Added Value Assessment in the substantive subsidiarity objections which follow.

3. The House of Commons recognises as the objective of both Article 223(1) TFEU and this proposal of creating a uniform procedure for direct universal suffrage to the European Parliament in order to enhance its democratic legitimacy through electoral equality. However, it does not consider that the objective requires harmonisation at a level of detail that in fact detracts from that legitimacy by divorcing the European Parliament’s electoral procedure from that which is well-established and recognised in Member States.

²² This accompanies, but is not part of the proposal i.e. the draft legislative act.

²³ This is only referenced by the Resolution: “The Reform of the Electoral Law of the European Union: a European Added Value Assessment” produced by the EU Added Value Unit of the European Parliamentary Research Service, [September 2015](#).

²⁴ There is some recognition in relation to the common minimum deadline for establishing candidate lists at national level that having a different deadline to the domestic electoral deadlines could “put pressure on domestic electoral bureaucracies and parties, especially the smaller ones” (P.16).

²⁵ It has not been translated into all the official languages of the EU and it only available in English, French, German and Polish).

4. With this in mind, the House raises the following specific objections to EU level action on the grounds that the measures in question do not comply with the principle of subsidiarity²⁶:

- a) Given the wide diversity of types of elected bodies that exist at sub-national level across Member States and their range of powers, we consider it more appropriate to leave to Member States the question of whether to make members of regional parliaments and assemblies “vested with legislative powers” ineligible to become MEPs (Article 1(8) of the proposal). There is also no assessment of the impacts of such a prohibition and no identification of any expected benefits in either the Resolution or the European Added Value Assessment;
- b) As the “European Added Value Assessment” itself recognises, the question of gender equality of candidates (Article 1(4) of the proposal) is a matter which is politically sensitive for Member States and that a “softer, non-binding approach” would be “wiser”²⁷. A simple requirement to ensure the gender equality of candidates implies the need for legal quotas which would, in our view, require further consideration and assessment.
- c) There is potential for a decreased voter turnout in the UK for EP elections if certain administrative inconsistencies created between EU and national arrangements by the proposal meant that the UK could no longer combine them with local elections. Such inconsistencies might arise in relation to common deadlines for both lists of candidates and electoral rolls (Article 1(4) of the Proposal). This would undermine the EP’s objective of increasing voter participation in the elections (Preamble B and E of the Resolution). The House notes that it is only in relation to common deadlines for candidate lists that the potential burden of different electoral practices required by the proposal on national electoral bureaucracies is recognised by the European Added Value Assessment (Page 16). Even then, it is dismissed on the grounds that this would only be a five-yearly burden and that differences would mark out the EP elections as being distinct from other elections, without any attempt to quantify the burdens to be imposed or demonstrates why this distinction promotes the objective;
- d) The European Parliament would like Member States to use electronic voting at EP elections (Article 1(5) of the proposal). The fact that this is on a non-mandatory basis²⁸ does not exempt the European Parliament from the obligation to provide sufficient subsidiarity justification of the measure for those Member States who may adopt the measure as a result of the proposal. The House considers that the consideration of costs implications in the European Added Value Assessment on this measure is limited and unclear: the Assessment acknowledges the lack of empirical evidence linking voter turnout and electronic voting and, in default, the sole example of one Member State, Estonia, having used the system in the EP elections of 2009 and 2014 is used to justify the recommendation for all. This is despite the fact that although in 2009 turnout in that country increased by 16% compared with 2004, there was then a 7% decrease in

²⁶ Article 5(3) TEU.

²⁷ See footnote 6, p.29.

²⁸ Though the consequential requirement to ensure the reliability of the result, secrecy of the vote and data protection is itself mandatory.

2014. The recommendation is also made despite the adverse experience of the Netherlands in piloting a system which was insecure, the German Constitutional Court having declared it unconstitutional and a generalised conclusion based on a study by one Member State²⁹ that electronic voting if used as a substitute for paper voting, could be more cost-effective (Pages 26, 27 and 28 of the Assessment). However, the House notes that the UK Government considers that the costs of implementing electronic voting in the UK could be “substantial”³⁰ and is also concerned that the uncertain integrity of electronic voting systems and the attendant risk of electoral fraud could undermine the EP’s objective of increasing its own democratic legitimacy (Preamble B of the Resolution); and

- e) The European Value Assessment provides unclear substantiation of the need for a mandatory 3-5% mandatory threshold for gaining a seat in the European Parliament (Article 1(3) of the Proposal). It describes the legal practice of mandatory electoral thresholds as “widespread” in Member States but the evidence it provides indicates that only 15 Member States have already introduced the required threshold (Page 17 of the Assessment). But the remaining 13 Member States not adopting that practice represent a sizeable number of non-practising Member States. The evident varied practice of Member States and their differing political and electoral circumstances suggests that this is a matter best decided at national level. The House also considers that such a requirement could undermine the European Parliament’s objective of enhancing its democratic legitimacy (Preamble B and E of the Resolution) and broadening its composition if, as a consequence, it excludes minority and independent candidates.

²⁹ A study by published by the French Senate but which is not accessible from the link provided.

³⁰ See para 41 of the Explanatory Memorandum of the Minister for Europe of the UK Government (Mr David Lidington) of [4 January 2016](#).