

Martin Schulz
President of the European Parliament

... January 2016

Re: Transmission of the Proposal for a Council decision adopting the provisions amending the Act concerning the of the members of the European Parliament by direct universal suffrage to the national parliaments

Dear Mr. Schulz,

Undersigned national parliaments of the European Union are writing you to request an explanation for the way the European Parliament has transmitted its draft legislative proposal on the reform of the Electoral Act (EP-resolution T8-0395/2015, file number 2015/2035) to us.

As you well know, on 11 November 2015 the European Parliament adopted a resolution and a proposal for a Council Decision adopting the provisions amending the Act concerning the election of members of the European Parliament by direct universal suffrage (electoral act reform proposal). This proposal is based on Article 223 TFEU and thus constitutes a draft legislative act. According to Article 2 of Protocol 1 and Article 4 of Protocol 2 to the Lisbon Treaty, draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly. Within eight weeks of a draft legislative act being made available to national Parliaments in the official languages of the Union, any national chamber or Parliament has a right to issue a reasoned opinion concerning the subsidiarity of the proposal.

However, in this particular instance, the national parliaments were notified of the adoption of the draft legislative act for electoral reform by the EP not only much later than the Council was, but also on different dates, sometimes without the actual text of the proposal and only on an administrative level. Some of us have not received the transmission letter as of yet, either hard-copy or electronically.

This means that the European Parliament failed to send the legislative proposal to the national parliaments in conformity with the provisions of Protocol 1 and 2. As a result, we were hampered in the exercise of our rights under the Lisbon Treaty.

We urge you to repair the faulty transmission of this proposal at the earliest opportunity and request a written explanation as to why this legislative proposal was not transmitted to national parliaments as a draft legislative act, in accordance with the provisions of Protocols 1 and 2.

We also notify you that some of us are currently scrutinizing the proposal pursuant to the procedures as described in the Lisbon Treaty.

This letter reflects the position of the competent committees in national parliaments, whose chair persons are the signatories of this letter.

We look forward to receiving a response to this letter within one week from receipt.

Mrs. P.A. DIJKSTRA
Chair of the committee on the interior
House of Representatives of the Netherlands

etc....

Proposal for a
COUNCIL DECISION

adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 223(1) thereof,

Having regard to the proposal from the European Parliament,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas the Treaty provisions concerning the electoral procedure should be implemented,

HAS ADOPTED the following provisions and recommends that they be approved by the Member States in accordance with their respective constitutional requirements.

Article 1

The Act concerning the election of the Members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom⁵², is amended as follows:

(1) In Article 1, paragraph 1 is replaced by the following:

"1. In each Member State, members of the European Parliament shall be elected as representatives of the citizens of the Union on the basis of proportional representation, using the list system or the single transferable vote."

(2) The following article is inserted:

"Article 2a

⁵² Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ L 278, 8.10.1976, p. 1).

The Council decides by unanimity on a joint constituency in which lists are headed by each political family's candidate for the post of President of the Commission."

- (3) Article 3 is replaced by the following:

"Article 3

For constituencies, and for single-constituency Member States, in which the list system is used and which comprise more than 26 seats, Member States shall set a threshold for the allocation of seats which shall not be lower than 3 per cent, and shall not exceed 5 per cent, of the votes cast in the constituency, or the single-constituency Member State, concerned."

- (4) The following articles are inserted:

"Article 3a

Each Member State shall set a deadline for the establishment of lists of candidates for election to the European Parliament. That deadline shall be at least 12 weeks before the start of the electoral period referred to in Article 10(1).

Article 3b

The deadline for the establishment and finalisation of the electoral roll shall be eight weeks before the first election day.

Article 3c

Political parties participating in elections to the European Parliament shall observe democratic procedures and transparency in selecting their candidates for those elections.

Article 3d

The list of candidates for election to the European Parliament shall ensure gender equality.

Article 3e

The ballot papers used in elections to the European Parliament shall give equal visibility to the names and logos of national parties and to those of the European political parties.

Member States shall encourage and facilitate the provision of those affiliations in television and radio campaign broadcasts and on electoral campaign materials. Electoral campaign materials shall include a reference to the manifesto of the European political party, if any, to which the national party is affiliated.

The rules concerning the posting of electoral materials to voters in elections to the European Parliament shall be the same as those applied for national, regional and local elections in the Member State concerned.

Article 3f

European political parties shall nominate their candidates for the position of President of the Commission at least 12 weeks before the start of the electoral period referred to in Article 10(1)."

- (5) The following articles are inserted:

"Article 4a

Member States may introduce electronic and internet voting for elections to the European Parliament and, where they do so, shall adopt measures sufficient to ensure the reliability of the result, the secrecy of the vote and data protection.

Article 4b

Member States may afford their citizens the possibility of casting their vote by post in elections to the European Parliament."

- (6) In Article 5(1), the second subparagraph is deleted.

- (7) Article 6 is replaced by the following:

"Article 6

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate. They shall represent all Union citizens.

2. Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community."

(8) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The office of member of the European Parliament shall be incompatible with that of:

- member of the government of a Member State,
- member of a national or regional parliament or assembly vested with legislative powers,
- member of the Commission,
- Judge, Advocate-General or Registrar of the Court of Justice of the European Union,
- member of the Executive Board of the European Central Bank,
- member of the Court of Auditors,
- European Ombudsman,
- member of the Economic and Social Committee,
- member of the Committee of the Regions,
- member of committees or other bodies set up pursuant to the Treaty on the Functioning of the European Union or the Treaty establishing the European Atomic Energy Community for the purposes of managing the Union's funds or carrying out a permanent direct administrative task,
- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Union or of the specialised bodies attached to them or of the European Central Bank.";

(b) paragraph 2 is deleted;

(c) paragraph 4 is replaced by the following:

"4. Members of the European Parliament to whom paragraphs 1 and 3 become applicable in the course of the five-year period referred to in Article 5 shall be replaced in accordance with Article 13."

(9) The following articles are inserted:

"Article 9a

All Union citizens, including those living or working in a third country, shall have the right to vote in elections to the European Parliament. Member States shall take the necessary measures to ensure the exercise of this right.

Article 9b

Each Member State shall designate the contact authority responsible for exchanging data on voters with its counterparts in the other Member States. That authority shall transmit to those counterparts, at the latest six weeks before the first day of the election and via uniform and secure electronic means of communication, data concerning Union citizens who are nationals of more than one Member State and Union citizens who are not nationals of the Member State in which they are residing.

The information transmitted shall include at least the surname and forename, age, city of residence, and date of arrival in the Member State concerned, of the citizen in question."

(10) Articles 10 and 11 are replaced by the following:

"Article 10

1. Elections to the European Parliament shall be held on the date or dates and at the times fixed by each Member State. For all Member States the date or dates shall fall within the same period starting on a Thursday morning and ending on the following Sunday. The election shall end in all Member States by 21:00 hours CET on that Sunday.
2. Member States shall not officially make public the results of their count until after the close of polling. First official projections of the results shall be communicated simultaneously in all Member States at the end of the electoral period specified in paragraph 1. Prior to this no exit poll-based forecasts may be published.
3. The counting of postal votes shall begin in all Member States once the polls have closed in the Member State whose voters vote last within the electoral period referred to in paragraph 1.

Article 11

1. The European Parliament, after consulting the Council, shall determine the electoral period for the elections at least one year before the end of the five-year term referred to in Article 5.
2. Without prejudice to Article 229 of the Treaty on the Functioning of the European Union, the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period."

(11) Articles 14 and 15 are replaced by the following:

"Article 14

Measures to implement this Act shall be proposed by the European Parliament, acting by a majority of its component members, and adopted by the Council, acting by a qualified majority, after consulting the Commission and obtaining the consent of the European Parliament.

Article 15

This Act is drawn up in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all the texts being equally authentic.

Pursuant to Accession Treaties, the Bulgarian, Croatian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian versions of this Act shall also be authentic."

(12) Annexes I and II are deleted.

Article 2

1. The amendments laid down in Article 1 shall take effect on the first day of the month following the approval of the provisions of this Decision by the Member States, in accordance with their respective constitutional requirements.

2. The Member States shall notify the General Secretariat of the Council of the completion of their national procedures.

Article 3

This decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President.*