

RESOLUTION
of the Sejm of the Republic of Poland

of 11 May 2017

on declaring the proposal for a Regulation of the European Parliament and of the Council on the electricity market (recast) to be incompatible with the principle of subsidiarity

Pursuant to Article 148cc of the Standing Orders of the Sejm, the Sejm of the Republic of Poland finds that the proposal for a Regulation of the European Parliament and of the Council on the electricity market (recast)(COM(2016) 861 final) is incompatible with the principle of subsidiarity described in Article 5(3) of the Treaty on European Union. This proposal infringes the principle of subsidiarity since the proposed regulation does not guarantee that the objectives of the proposed action would be better achieved at the European Union level instead of measures taken at the national level. The reasoned opinion stating the reasons why the Sejm considers that the proposal does not comply with the principle of subsidiarity is annexed to this Resolution.

Reasoned opinion of the Sejm of the Republic of Poland of 11th of May 2017 stating the reasons why the Sejm considers that the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) is incompatible with the principle of subsidiarity

The Sejm of the Republic of Poland finds that the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) (COM(2016) 861 final) is incompatible with the principle of subsidiarity described in Article 5(3) of the Treaty on European Union (TEU). This proposal infringes upon the principle of subsidiarity since the proposed Regulation does not guarantee that the objectives of the proposed action would be better achieved at the European Union level instead of measures taken at the national level.

According to the Sejm's assessment, it is inadmissible to take EU-level binding decisions applicable to Member States concerning the construction of cross-border connections which could induce a shift in the general energy supply mix - from domestic generation to import. Without questioning the necessity of striving towards the achievement of the goal set out in Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), i.e. promoting the interconnection of energy networks, the reservation must be made that this goal is not tantamount to taking EU-level decisions regarding the construction of such interconnections or obliging Member States to build them, without paying attention to economic effectiveness and state decisions on the general energy supply mix. Poland, as other Member States, should contribute to the achievement of the EU common energy market objective by building connections between energy networks; however, the administrative instruments proposed to enforce this process should be recognised as too far-reaching.

The Sejm considers that the subsidiarity principle is infringed upon by those provisions envisaged in the proposal for a Regulation which open the possibility to

apply EU-level measures that could affect the energy supply mix, should energy sector measures be applied:

1) introducing a ban on developing a two-commodity market and on using domestic energy resources to solve the problem of insufficient resources at domestic level if sufficient European resources are found, and the obligation to treat interconnections and demand-side response as a priority (and not as an equivalent source) (Article 23 of the proposed Regulation);

2) introducing CO₂ emission limits in the planned measures to support the development of new generation capacities (capacity markets) for entities participating in a two-commodity market, which leads in practice to the elimination of coal entities from participating in a two-commodity market (Article 23(4) of the proposed Regulation). Maintaining this limit on a domestic market would lead to a *de facto* exclusion of the most economical and flexible measures intended to solve the problem of insufficient generation capacities, which would obviously translate into an increase in the capacity market implementation cost for final consumers. This in turn would directly lead to an upsurge in the level of energy poverty, which is in itself contrary to the objectives of the EU energy policy;

3) requiring that any revenues resulting from the allocation of interconnection capacity shall be used for maintaining or increasing interconnection capacities and may not be used as income to be taken into account when calculating tariffs (Article 17 of the proposed Regulation).

According to the Sejm's assessment, in the case of the proposed Regulation the formal requirements for compliance with the subsidiarity principle are not met either. The Commission failed to provide sufficient justification demonstrating that the objectives of the proposed Regulation could not be regulated better at the Member State level. The lack of such a justification, in particular the lack of qualitative and quantitative indicators, constitutes an infringement on Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality annexed to the TEU and to the TFEU. Furthermore, this lack of justification makes it very difficult, if not impossible, for the national parliaments to use their right to scrutinise the compliance with the subsidiarity principle (Article 5(3), Article 12(b) of the TEU and Article 6 of Protocol (No 2)). As a consequence, this lack of justification may be considered an infringement upon Article 4(3) of the TEU, which states that pursuant to the principle

of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

To conclude, the Sejm considers that the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) (COM(2016) 861 final) infringes upon the principle of subsidiarity.