



14.7.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Sejm of the Republic of Poland on the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity
(COM(2016)0861 – C8-0492/2016 – 2016/0379(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Sejm of the Republic of Poland has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

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

The Sejm of the Republic of Poland takes the view 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 enshrined under Article 5(3) of the Treaty on European Union (TEU). This proposal violates the principle of subsidiarity given that the proposed Regulation does not guarantee that the objectives of the proposed action would be better achieved at European Union level than if measures were taken at the national level.

The Sejm takes the view that binding EU-level decisions on the construction of cross-border connections, which could cause a shift in the general energy supply mix – away from domestic generation and towards imports – are not admissible. While the need to strive towards the achievement of the goal set out in Article 194(2) of the Treaty on the Functioning of the European Union (TFEU) (promoting the interconnection of energy networks) is not brought into question, it must be pointed out that this is not the same as taking EU-level decisions regarding the construction of such interconnections or obliging Member States to build them, without taking account of economic effectiveness and Member State decisions on the general energy supply mix. While Poland, like other Member States, must contribute to efforts to achieve the EU common energy market objectives by building connections between energy networks, the proposed administrative tools go too far.

The Sejm takes the view that the subsidiarity principle is violated by the provisions in the proposal for a Regulation which pave the way for EU-level measures affecting the energy supply mix if energy sector measures are 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 proposed measures to support the development of new generation capacities (capacity markets) for entities participating in a two-commodity market, which would lead in practice to the exclusion 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 end consumers. This, in turn, would directly lead to an upsurge in the level of energy poverty, which in itself runs counter to the objectives of the EU energy policy;

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

In the Sejm's view, the formal requirements for compliance with the subsidiarity principle are not met in the proposed Regulation either. The Commission has failed to provide sufficient evidence that the objectives of the proposed Regulation could not be better regulated at Member State level. This lack of evidence, in particular the lack of qualitative and quantitative data, is a violation of 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 assess compliance with the subsidiarity principle, as is their right (Article 5(3), Article 12(b) of the TEU and Article 6 of Protocol (No 2)). It can therefore also be concluded that the proposed regulation is in breach of Article 4(3) TEU, which states that pursuant to the principle of sincere cooperation, the Union and the Member States must, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

To conclude, the Sejm takes the view 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) violates the principle of subsidiarity.

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) 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 violates the principle of subsidiarity given that the proposed Regulation does not guarantee that the objectives of the proposed action would be better achieved at European Union level than if measures were taken at the national level. The reasoned opinion explaining why the Sejm takes the view 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 11 May 2017 explaining why the Sejm considers the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) incompatible with the principle of subsidiarity

The Sejm of the Republic of Poland takes the view 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 enshrined under Article 5(3) of the Treaty on European Union (TEU). This proposal violates the principle of subsidiarity given that the proposed Regulation does not guarantee that the objectives of the proposed action would be better achieved at European Union level than if measures were taken at the national level.

The Sejm takes the view that binding EU-level decisions on the construction of cross-border connections, which could cause a shift in the general energy supply mix – away from domestic generation and towards imports – are not admissible. While the need to strive towards the achievement of the goal set out in Article 194(2) of the Treaty on the Functioning of the European Union (TFEU) (promoting the interconnection of energy networks) is not brought into question, it must be pointed out that this is not the same as taking EU-level decisions regarding the construction of such interconnections or forcing Member States to build them, without taking account of economic effectiveness and Member State decisions on the general energy supply mix. While Poland, like other Member States, must contribute to efforts to achieve the EU common energy market objectives by building connections between energy networks, the proposed administrative tools go too far.

The Sejm takes the view that the subsidiarity principle is violated by the provisions in the proposal for a Regulation which pave the way for EU-level measures affecting the energy supply mix if energy sector measures are 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);

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

In the Sejm's view, the formal requirements for compliance with the subsidiarity principle are not met in the proposed Regulation either. The Commission has failed to provide sufficient evidence that the objectives of the proposed Regulation could not be better regulated at Member State level. This lack of evidence, in particular the lack of qualitative and quantitative data, is a violation of 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 assess compliance with the subsidiarity principle, as is their right (Article 5(3), Article 12(b) of the TEU and Article 6 of Protocol (No 2)). It can therefore also be concluded that the proposed regulation is in breach of Article 4(3) TEU, which states that pursuant to the principle of sincere cooperation, the Union and the Member States must, 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.