I would like to inform that the Senate, upon having examined the proposal for a regulation of the European Parliament and the Council amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (COM (2010) 61) at the 53rd session held on 29 April 2010, decided that the proposal was not fully consistent with the subsidiarity principle, referred to in Article 5 para. 3 of the Treaty on European Union.

Pursuant to the procedure provided for in Protocol No. 2 of the Treaty on European Union and the Treaty on the Functioning of the European Union as regards the application of the subsidiarity principle and proportionality principle, I submit a justified opinion containing the reasons for which the Senate has determined the aforementioned proposal to be inconsistent with the subsidiarity principle.

OPINION

OF THE SENATE OF THE REPUBLIC OF POLAND

of 29 April 2010

**on the inconsistency with the subsidiarity principle
of the proposal for a regulation of the European Parliament and the Council
amending Council Regulation (EC) No 2007/2004 establishing a European Agency
for the Management of Operational Cooperation at the External Borders
of the Member States of the European Union (Frontex) COM (2010) 61**

The Senate, upon having examined the proposal for a regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) COM (2010) 61, declares that it is inconsistent with the subsidiarity principle referred to in Article 5, para. 3 of the Treaty on European Union. The subsidiarity principle has been breached by:

1)   the second subparagraph of Article 3(1), as amended by the regulation proposal, in so far as it allows Frontex to initiate joint operations at the external borders of the European Union – since Member States have better understanding of the local needs regarding the protection of their borders, the existing legal status should be maintained, whereby Frontex initiates operations upon the motion of the relevant Member State;

2)   Article 3a, as amended by the regulation proposal, according to which the operational plan for activities at the external borders shall be drawn up by the Executive Director of Frontex – on account of better knowledge of the local situation and conditions for operations, the operational plan for activities at the external borders should be drawn up by the host Member State only in cooperation with Frontex;

3)   Article 3b(1), as amended by the regulation proposal, according to which the Management Board of Frontex shall take decisions concerning the border guards to be deployed to Frontex Support Teams – since Frontex operations cannot destabilise the national border protection system, the Member State should have an influence on the number and profile of guards it deploys; this matter may only be discussed between Frontex and the relevant Member State;

4)   Article 3c, as amended by the regulation proposal, according to which the host Member State, on whose territory Frontex is operating, shall be obliged to consider the views of the Frontex coordinating officer – the respect of the host Member State's sovereignty and operational effectiveness resulting from better knowledge of local conditions mean that the host Member State should have the decisive vote regarding operations on its territory;

5)   Article 7, as amended by the regulation proposal, in so far as Frontex shall be entitled to unilaterally decide upon equipment that is to be made available for Frontex operations by the host Member State and the acquisition or lease of equipment – since Frontex has no competence of its own regarding border protection and Frontex operations always take place on the territory of one of the Member States, the Member States should have the decisive influence on these matters.