

COURTESY TRANSLATION

Warsaw, July 29, 2013

Dear Mr. President,

According to the provisions of the Lisbon Treaty I hereby enclose reasoned opinion on non-compliance with the principle of subsidiarity of:

- Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports (COM(2013) 296 final) adopted on the 46th session of the Polish Sejm on 26th of July 2013.

I would like to inform that the email address: eudoc@sejm.gov.pl is the main one to contact, when the discussion about subsidiarity rule is provided.

Please accept assurances of my highest esteem,

Ewa Kopacz

Mr. José Manuel Barroso

*President of the European Commission
Brussels*

RESOLUTION
of the Sejm of the Republic of Poland

of 26 July 2013

**declaring the proposal for a Regulation of the European Parliament
and of the Council establishing a framework on market access to port services
and financial transparency of ports to be incompatible with the principle of
subsidiarity**

Pursuant to Article 148cc of the Standing Orders of the Sejm of the Republic of Poland, the Sejm of the Republic of Poland declares that the proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports (COM(2013) 296 final) is incompatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union. The proposal infringes the principle of subsidiarity inasmuch as the proposed Regulation – as a legal act binding in its entirety and directly applicable in all Member States – does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of actions taken at 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 ... 2013
stating the reasons why the Sejm considers that the proposal for a Regulation of
the European Parliament and of the Council establishing a framework on
market access to port services and financial transparency of ports does not
comply with the principle of subsidiarity**

Having considered the proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports (COM(2013) 296 final), the Sejm of the Republic of Poland declares that the proposal does not comply with the principle of subsidiarity referred to in Article 5 (3) of the Treaty on European Union (TEU). The proposal infringes the principle of subsidiarity inasmuch as the proposed Regulation – as a legal act binding in its entirety and directly applicable in all Member States – does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of actions taken at national level.

As declared by the European Commission, the objective of the proposed Regulation is to contribute to the goal of a more efficient, interconnected and sustainable functioning of the trans-European transport network (TEN-T) by creating a framework which improves the performance of all ports and helps them to cope with changes in transport and logistics requirements. In the opinion of the Sejm, the proposal does not ensure that this objective will be fulfilled “better” – within the meaning of Article 5(3) TEU and Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality enclosed to TEU and the Treaty on the Functioning of the European Union (TFEU) – than the Member States acting in accordance with their national laws and regulations. The improvement of the quality of services and modernisation of port services, in order to improve the performance of TEN-T ports, and a greater financial independence of ports required to attract investments in ports can be equally achieved by the EU Member States alone without the need for intervention by the EU. The proposed Regulation provides for measures

with which it intends to achieve the desired objectives, including: a limitation in the number of providers of services; imposition of the public service obligation on specific providers; ensuring the transparency accounts for the effective and appropriate use of public funds; differentiation of the port infrastructure charges according to the commercial practices, environmental performance and energy efficiency. The Member States already have such measures in place and it is not necessary for them to be regulated by a regulation. The EU actions in the port sector, which is of strategic significance to the national economies of the Member States with access to the sea, must – owing to the foreseeable environmental effects – take into account the local and regional dimensions, as well as the specific hydrological or environmental conditions of the sea areas concerned. The Union actions which intend to lay down rules governing this sector must be based on solid rationale, especially with regard to the necessity of taking those actions as well as special benefits (added value) for the EU, and have to be consistent with the objective of the proposed regulation. The Commission has failed to provide sufficient justification of the proposed action.

To sum up, the Sejm believes that the proposed regulation is in breach of the principle of subsidiarity.