

**OPINION
OF THE SENATE OF THE REPUBLIC OF POLAND
of 27 April, 2017**

**on the incompatibility with the principle of subsidiarity
of the proposal for a Regulation of the European Parliament and of the Council on the
internal market for electricity (recast)**

COM(2016) 861

Having considered the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) – COM(2016) 861, the Senate declares that the proposal is incompatible with the principle of subsidiarity as referred to in Article 5 (3) of the Treaty on European Union.

The Senate of the Republic of Poland does not deny the need to arrive at a consensus on the common rules for the internal electricity market at a higher level than regional or national.

At the same time, the Senate of the Republic of Poland considers that the proposed solution is incompatible with the principle of subsidiarity inasmuch as the Member States have their treaty-based rights to decide on their own energy mix, technological neutrality and sovereign domestic energy policy. This alleged violation of the principle of subsidiarity applies in particular to:

1. The requirement of the European resource adequacy assessment;
2. Adoption of technical requirements related to emissions (below 550 gr CO₂/kWh) for generation units to be included in the energy market;
3. Obligation to include cross-border trade in internal energy markets;
4. Establishment of Regional Operational Centres and their scope of authority.

The Senate of the Republic of Poland also points out that Article 194 (2) of the Treaty on the Functioning of the European Union states that a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply shall not be violated.

Furthermore, the Senate of the Republic of Poland is of the opinion that the proposed regulation encroaches too far on the powers reserved to the Member States in the scope of energy security policy while leaving the responsibility for system hazards to Member States. As a result, this may reduce the energy security level in individual Member States and the EU as a whole.

Therefore, it should be recognised that the proposed regulation is in breach of the subsidiarity principle.