



**POPIHN**  
Polska Organizacja Przemysłu i Handlu Naftowego



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### **Press Release**

***Polish entrepreneurs are hoping that the CJEU will recognize the so-called „VAT paid sooner” (PL: szybki VAT) on intra-Community acquisitions of fuel, which is a pillar of the government's regulatory package known as the "fuel package", as compliant with EU law.***

Fuel industry organizations (Polish Chamber of Liquid Gas - PIGP, Polish Chamber of Liquid Fuels - PIPP, Polish Petroleum Industry and Trade Organization - POPIHN, Polish LNG and BioLNG Platform - PPLNG ) and Union of Entrepreneurs and Employers – ZPP, took a position in a case pending before the CJEU, regarding the compliance of Polish VAT-14 regulations with EU law (C-855/19). The case is pending at the request of the Supreme Administrative Court in the case of G. Sp. z o.o. v Director of the Tax Chamber in Bydgoszcz. The reason for the joint motion was the opinion of the Advocate General of the CJEU, who found the regulations under review to be inconsistent with EU law.

The letter to the CJEU was agreed with the companies most widely using the existing rules. The signatories work for a competitive, customer- and business-friendly market, ensuring the safe and sustainable development of the economy, taking into account EU standards and European values. Following the amicus curiae\* tradition of Roman law, these organisations submitted a position paper to the CJEU to assist the CJEU in deciding the case before it.

The scale of illegal fuel trading in Poland in 2015 reached over 20% of the legal market. One of the most popular models used by criminals was the importation of fuel by so-called "disappearing taxpayers". The proposal to accelerate VAT prepayments on intra-community fuel acquisitions was proposed by fuel companies even before 2015. Such a solution, although it had a negative impact on the liquidity of entrepreneurs, was nevertheless necessary to combat organized crime.

Changes in regulations, especially the acceleration of the deadline for paying VAT advance on fuel purchases and the monitoring of transport, developed in cooperation with the fuel industry, resulted in a large increase in recorded sales. According to POPIHN calculations, tax revenues paid by the fuel industry in 2015 from VAT, excise duty and fuel surcharge were PLN 50 billion, and in 2019 ca. PLN 74 billion. Most of this increase was due to a reduction in the activities of criminals.



A formal and legal analysis may also support the conclusion that the mechanism of „VAT paid sooner” (PL: szybki VAT) is compatible with the EU law. The argumentation used by the Advocate General a contrario when comparing the scope of Articles 273 and 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax raises key doubts.

According to Krzysztof Rutkowski, legal counsel - *The Advocate General of the CJEU presented a biased opinion that omits arguments for Poland's position. In particular, there are doubts as to the interpretation of Article 273 of the VAT Directive according to which the demand for payment by way of future tax may concern only 'net' amounts and must therefore relate to the 'result' of the amount of VAT due for a given period, and not to the 'gross' amount of VAT. In my view, AG Saugmandsgaard's view that under Article 273 of the directive Member States may impose only such 'additional obligations' which would be fully (i.e. 100%) compatible with the other provisions of the VAT directive is also incorrect. Such an interpretation deprives Article 273 of its substance and meaning.*

Adoption of the Advocate General's position may undermine the assumption of rationality of the EU legislator and should not be acceptable in the current legal system. At the same time, the position draws attention to the fact that the adoption of such an interpretation by the CJEU would mean that national law would have to be amended in the contested area. In other words, one of the pillars of tax sealing, which significantly contributed to reducing gigantic pathologies in the liquid fuels market sector, will be undermined.

*Polish entrepreneurs hope that the CJEU will acknowledge the compliance of the "VAT paid sooner" with the EU law. The adoption by the CJEU of the position of the Advocate General could undermine the confidence of legal business in EU law and EU institutions, and would also entail the risk of an increase in illegal fuel trading in Poland - said Marcin Nowacki, Vice-President of ZPP.*

*All members of the aforementioned organizations hope that the Court will take advantage of the benefit from the institution of amicus curiae and will accept the interpretation that Polish legislation on „VAT paid sooner” is consistent with EU law.*



Media Contacts:

Nadia Rybczyńska, senior specialist at POPIHN: [nadia.rybczynska@popihn.pl](mailto:nadia.rybczynska@popihn.pl), +48 726 965 000

Krzysztof Rutkowski, legal counsel: [Krzysztof.Rutkowski@kdcpl.pl](mailto:Krzysztof.Rutkowski@kdcpl.pl), +48 602 489 214

\*a person or organization that is not a party to the litigation and voluntarily, on its own initiative, offers the court a legal or other opinion concerning the subject matter of the litigation.

**The Polish Chamber of Liquid Gas (PIGP)** was established in 2004 in Warsaw as an association of LPG distributors and other entities conducting business activity in the production, purchase and bottling of liquid gas. <https://pigp.pl/>

**The Polish Chamber of Liquid Fuels (PIPP)** is an economic self-government organisation established in 1991 by entrepreneurs in the Polish private fuel sector. It currently associates over 300 companies operating in different segments of the fuel market, mainly retail and wholesale. <https://paliwa.pl>

**Polish Petroleum Industry and Trade Organization (POPIHN)** was established in 1995. It represents the largest companies in the fuel sector, takes up challenges of energy transformation in the fuel sector. POPIHN's objective remains a fully competitive, customer-friendly market, as well as ensuring secure and sustainable development of enterprises operating in the production and distribution of liquid fuels and lubricating oils. <https://popihn.pl>

**The Polish LNG and bioLNG Platform (PPLNG)** was established in 2017 as an employers' association aiming to promote LNG and bioLNG as a modern and cleaner fuel, both for road, sea and rail transport, as well as for co-generation or other industrial applications. <https://pplng.pl/>

**Association of Entrepreneurs and Employers (ZPP)** was established in 2010. It unites over 50 thousand companies employing over 576 thousand people. ZPP includes branch and regional organizations located throughout Poland. ZPP is focused on issues most important for Polish entrepreneurs, such as creating good and understandable laws, streamlining the judiciary, simplifying the tax system, reducing bureaucratic obligations and eliminating investment barriers for entrepreneurs. <https://zpp.net.pl/>