

# Prosecution of Offenders in Liquid Fuels Turnover

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**Summary** — The paper presents theoretical and practical aspects of prosecution of criminals involved in illegal sales of liquid fuels. It has been noticed that despite increasing attention paid to the prosecution of fuel frauds, the grey area still exists, which is due to the fact that such crimes are easy to commit, the profits to be gained are enormous, and legal consequences are rather insignificant. Recently, however, the detectability of tax frauds has increased. The improved efficiency of tax control authorities can be attributed to the introduction of the following: methodology of assessment of due diligence demonstrated by the buyers of goods in domestic transactions; JPK – the Polish equivalent of SAF-T (Standard Audit File for Tax); split payment; SENT system; fuel package.

**Key words:** fuel frauds, SENT, Energy Regulatory Office (URE), fuel package, excise, fuel crimes, grey area, extortion

## I. INTRODUCTION

The aim of this paper is to define the conditions and effectiveness of prosecution of fraudsters operating in the sales of liquid fuels. Fuel is a high demand commodity with continuously fluctuating prices. At the same time, due to high public levies, fuel trade is extremely vulnerable to the activity of organised crime groups who use it to commit tax related offences. The grey area of the fuel market in Poland has been well established since 1990s. Fuel related offences refer not only to illegal turnover of fuels but also to VAT frauds. The dealings in the grey area of fuel turnover cause significant losses to the Polish State Treasury and to law abiding entrepreneurs operating in this sector. The analysis conducted by the author of the paper includes the modus operandi of perpetrators which has changed and evolved over the last three decades. According to the author, understanding the behaviour of criminals in the economic circulation enables effective prosecution of frauds related to fuel trading, but despite increased activity of the law enforcement agencies and tax authorities prosecuting these procedures, there are still various types of crime that involve tax law mechanisms aimed at VAT and excise frauds.

## II. MODUS OPERANDI

The peak of organised crime activities regarding distribution and production of liquid fuels in Poland could be observed in the second half of the 1990s. At that time in Poland, there were about seventy private entities with concessions for fuel production and seven big refineries. Illegal activities were facilitated by the system of complicated tax rates in force at that time and excessive focus on social issues with little regard for the economic reality. High taxes were imposed on fuels for land vehicles and additionally there was a separate road tax. Thus, the motorists were taxed twice. For social reasons, a much lower tax rate was imposed on heating and lightning kerosene. Similarly, in order to protect jobs in the unprofitable fishing sector, the legislator imposed a reduced tax rate on the marine fuel which resulted in flooding the petrol stations with marine diesel oil. At the same time, numerous upratings of the excise resulted in a significant difference between the prices of oils produced with ecological concessions and the prices of oils which did not meet the environmental standards. At some stage, used oils were sold at higher prices than some kinds of full value fresh oil. Subsequent changes to the regulations implemented by the Ministry of Finance extended the scope of concession and started to count the water from ship bilges as used oil. Such water was suitable for regeneracy and was obtained on a large scale by adding water to the cistern with fresh fuel. In fact, there were different tax rates for very similar high demand products. Therefore, it does not come as a surprise that some clever individuals and groups of individuals started to see the situation as an opportunity to generate considerable profits or pay lower taxes just by a small change of properties of the fuel products.

Officially all fuels must be marked with the so called CN codes which enable their identification through the physical characteristics and parameters like colour, smell, vapour pressure, MTBE and lead monoxide content, appearance and many other characteristics. Very often, the fuels obtained from the grey area did not fulfill these requirements and did not conform to the quality parameters guaranteed by big oil companies which are forced to comply with all the quality



standards. In 1998, the Ministry of Finance made it obligatory to colour heating oils. The use of the so-called markers, which are impossible to separate, became obligatory in 2000, and the standards were strengthened further in 2005 and 2010. The decision to make the markers obligatory was taken under pressure from diesel fuel manufacturers who had suffered significant losses due to widespread sales of cheaper heating oil. Unfortunately, separating the colourant from the fuel was very easy and virtually cost-free. The process consisted of application of diatomic earth, Neocryl or limewash which served as neutralisers, and then application of sulphuric acid. The precipitation was at the cost of 10% of the oil weight. The residue after the precipitation of the colourant also did not constitute a loss. The contaminated part was sold to refineries as the so-called used oil. After the regeneracy, the oil was supposed to go straight to production of fresh oils, which were subject to excise due to the costs related to the collection and regeneracy of used oil. In the beginning, the quality of products obtained by combining the Russian mazut and heating oil or colza oil was very low. The base petrol or cracked petrol supplied by the Polish refineries were mixed with *methylterbutylether* or toluene, and fuels with Sulphur content of little octane level were released for retail selling. Other petroleum products were also diluted: lighting kerosene, jet and rocket fuel, isopentane, white spirit, petroleum ether, industrial waste etc.

Illegal production of petrol and diesel oils opened more income possibilities such as for example tax frauds. Moreover, purchase procedures were undertaken regarding fully-fledged fuel invoiced as a raw component which was exempt from excise. Such fuel was sold along a path of fictional transactions to consecutive companies and sole traders. The entities that bought a semi-finished product and then marketed diesel oil or petrol were obliged to pay excise tax charged at the time of the fuel production. In practice, however, the State Treasury had no possibility to regain the due amounts because these transactions were not controlled and the debtors had no assets. Another way of clearing the beneficiaries' accounts was unregistered sales of the produced petrol, with simultaneous anonymously registered documentation of the disposal of the legally bought semi-finished products or declared products, for example, white spirit. Thereby, a prospective control of the transaction could not disclose inconsistencies between the stocks and the business record. The accounting records could not be verified by testimonies of witnesses because they were anonymous buyers.

Another commonly used procedure was the so called 'vanishing shipments'. The procedure was built on the customs policy of the European Economic Community according to which carriages which entered the EU territory could be checked in any member state indicated upon crossing the external border. Everything was based on falsified documents and orders placed by entities operating legally in other EU countries. The transported petroleum products never arrived at their destination, instead they were sold in the grey area or their source was seemingly legalized through a chain of fictitious transactions. Prospective inspections disclosed the lack of concluded contracts, which disabled the due taxes to be levied. In reality, oil related frauds spread throughout the whole

country and the criminals explored and capitalized on every possibility of making illegal money on the Polish oil market.

It is highlighted that smuggling, illegal production, claiming lower taxes and extortion of undue VAT return are not all illegal ways of earning money on the oil market. Another method was registration of enterprises of little significance from a tactical point of view in the name of persons with figurehead role. Such businesses existed only for the purpose of taking full responsibility for illegal activity. Large amounts of crime money were accumulated on bank accounts of such businesses and this dirty money was introduced into official turnover. In case of a crosscheck control, the significant entities who were assumed to operate legally, were expected to have their resources subjected to a registered circulation. Otherwise, the transactions associated with these resources were called into question and, according to the legal provisions in force, the fraudulent activity was detected.

### III. METHODS OF COUNTERACTING FRAUD

It is emphasized that in the 1990s, criminal activity in the oil industry was flourishing with little effectiveness of tax control authorities which were unable to cope with thousands of document pages with numerous domestic and international transactions. Dilution of activities on local level was combined with lack of cooperation between bodies of local authorities. On top of that, prosecutor's offices in particular regions did not coordinate their mutual procedures and did not exchange relevant information. As a result, effective criminal investigation and assessment of the scale of the criminal activity was impossible. Additionally, the proceedings were delayed due to absence of legal assistance from Germany where the fuel was mainly imported.

The breakthrough was the creation of a special investigation group within the Central Bureau of Investigation and the Tax Control Office. Additionally, as of 2002 all pending investigations started to be coordinated by the appellate prosecutor's office in Kraków. Nevertheless, the whole process of developing provisions to regulate production, import and distribution of liquid fuels raises doubts. For example, the Regulation of 15 December 1999 extended the environmental tax relief for producers using in their technological process used oils, on businesses using the so-called oily water i.e. the water left after washing the machine room on ships. Taking into account how easy it is to produce oily water artificially, it was difficult to estimate whether the losses incurred by the state translated in any improvement to the natural environment. Moreover, the provisions of the Penal Fiscal Code of 1999 seemed to be very lenient for offenders in the fuel sector. The Code assumed only mild penalties for tax fraudsters. The most severe punishment was 6 years of imprisonment, but between 2000 and 2005 the courts adjudicated this punishment only a few times. In reality, prison sentence was hardly ever decided, most of the time the offenders walked free with just a fine to pay. At the same time, other crimes against property of significant value with no violence applied e.g. fraud committed in circumstances of recidivism, was punishable up to 15 years of imprisonment under the Polish Penal Code. Another proof for lenient treatment of fiscal crimes was short limitation

periods for fiscal offences and fiscal crimes, which were respectively 3 and 5 years. For other types of similar crime e.g. common theft if the stolen amount exceeded 250 PLN, the regulations of the Penal Code in force at that time assumed a ten-year limitation period. Such leniency of the legal system for fuel fraudsters and high probability of avoiding punishment attracted criminals to the tax sector and to the oil industry in particular.

Back in the mid 1990s, the analysis of import statistics should have raised justified objections of the state authorities. The import of heating oil to Poland at that time exceeded several times the demand of the whole country for this product. Also customs declarations showed huge amounts of lighting kerosene, white spirit, ethers, organic solvents, aromatic hydrocarbons mixtures, degreasing agents, antiknock agents and diesel oil components. The declared substances did not present any significant differences in their consistency, appearance or smell, the key element was the restriction of excise. The situation was similar in case of marine fuel which was distinguished from the diesel oil only by a slightly higher permissible Sulphur content. The checks conducted by the Office of Competition and Consumer Protection detected bad quality of petrochemical products at some petrol stations, whereas the infringement of the standards was the increased sulphating. However, for some reason no actions were taken to investigate the matter further.

The implementation of the order of 31 March 1992 issued by A. Glapiński, the Minister of Foreign Economic Cooperation, which established a concession for oil and fuel import and export, was supposed to provide sufficient state supervision over this strategic sector. However, the order only demonstrated absolute incompetence of the authorities in terms of supervision, what is more, it also interfered in fair competition within the industry and made it impossible for market mechanisms to eliminate unfair market players.

Nowadays, investigations related to fuel crime are often started upon a notification to the National Revenue Administration or to the Ministry of Finance who initiate proceedings following an official notice from the General Inspector of Financial Information (GIIF). The GIIF is a specialised financial investigation institution within the Ministry of Finance, aimed at collecting and analysing information obtained from the members of the financial market, and sharing it with the state bodies. As a result, the law enforcement agencies obtain information on a suspected criminal activity directly from the specialised analytical institutions. The profile of GIIF's activity determines its field of interest which finds direct reflection in the content of crime notifications which are submitted to the prosecutor's office.

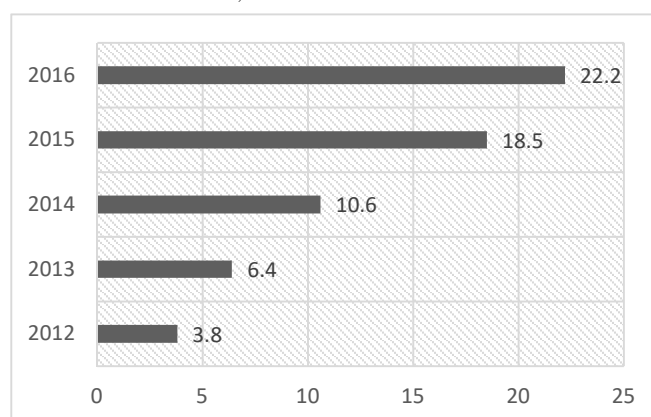
Currently, in its fight against fiscal crime, the Ministry of Finance makes use of the following legislative tools in order to reduce VAT frauds:

- 1) the methodology of assessment of due diligence demonstrated by the buyers of goods in domestic transactions;
- 2) JPK – the Polish equivalent of SAF-T (Standard Audit File for Tax);
- 3) the split payment (MPP);

- 4) SENT system which monitors sensitive goods transportation, including fuels;
- 5) the fuel package (the amendment to the Acts on VAT and excise, the Energy Law Act, and the Act on fuel stocks). The fuel package is a subsidiary regulation for the whole tax system. Its normalisation is aimed at implementing legal changes in the areas with the highest number of tax irregularities, particularly related to VAT frauds and VAT avoidance or depletion of excise duty. The new legal solutions are intended to support the already undertaken actions related to the effective collection of tax and other payments and their future redistribution. The implementation of the abovementioned legislative tools and rearrangement of regulations for fuel import, have significantly reduced the grey area. The Ministry of Finance, quoting the Polish Organisation of Oil Industry and Trade, estimated that the sales of diesel oil increased by 15% and the budget revenue went up by 2.5 billion PLN per year.

When it comes to counteracting fraudulent behaviour, it is worth emphasizing that in 2016 the tax investigation authorities conducted 9,855 control procedures. The number was higher by almost 500 if compared to the previous year. Additionally, tax inspectors acting upon request of other state bodies carried out over 1,700 interviews and inspections, and 2,760 times the financial institutions were requested to reveal information being banking secrecy. The information allowed the control authorities to get an insight into the flows on bank accounts. The controlling procedures resulted in detection of breaches causing a tax depletion of 22.2 billion PLN (Figure 1) which was almost a half of the budget deficit. The data presented in Figure 1 shows that in 2012-2016 the effectiveness of tax authorities increased almost five times (+484, 2%).

FIGURE. 1. THE AVERAGE NUMBER OF FINDINGS FOR THE CONTROL PROCEDURES IN 2012-2016, BN PLN

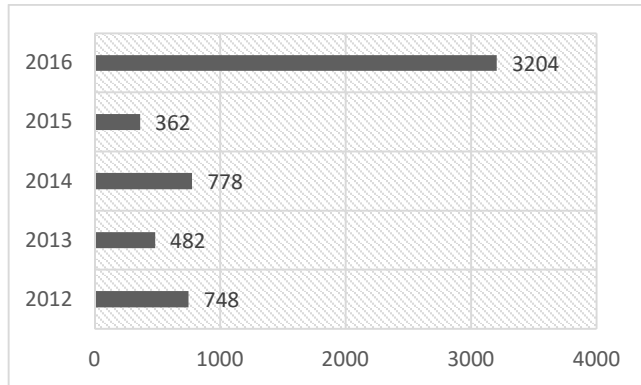


Source: Own work based on data obtained from the Ministry of Finance <https://www.mf.gov.pl/>, (access: 12.12.2018).

A number of Polish taxpayers fearing possible inspection from tax authorities, voluntarily amended their tax returns. The number of corrected tax returns increased by 184%. As a result, the state budget received an additional amount of 0.5 billion PLN. Apart from that, the fiscal control bodies paid close attention to losses declared by taxpayers. In 2016, the officials of the Ministry of Finance questioned a significant number of

loss declarations of many entrepreneurs which brought additional 3.2 billion PLN to the state budget. It was almost a nine time improvement when compared to the previous year (Figure 2).

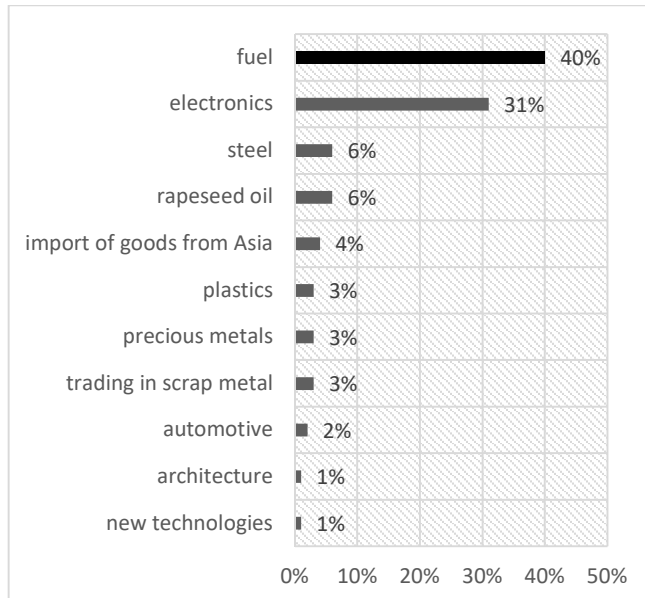
FIGURE 2. DECISIONS ON REDUCING THE LOSS DECLARED BY THE TAXPAYER IN 2012-2016, MILLIONS OF PLN



Source: Own work based on the data of the Ministry of Finance <https://www.mf.gov.pl/>, (access: 12.12.2018).

According to post-inspection proceedings, in 90% of all examined cases the irregularities concerned VAT related issues. The total worth of malpractice in the VAT area extended 20 billion PLN. Another category of offence is related to corporate tax (6.5%) and excise duty (slightly less than 3%). All in all, in terms of the so-called high-risk areas the biggest number of frauds to the detriment of the State Treasury was observed in the oil industry (40%) as shown in Figure 3.

FIGURE 3. THE PERCENTAGE OF VAT RELATED FINDINGS ACCORDING TO SECTORS

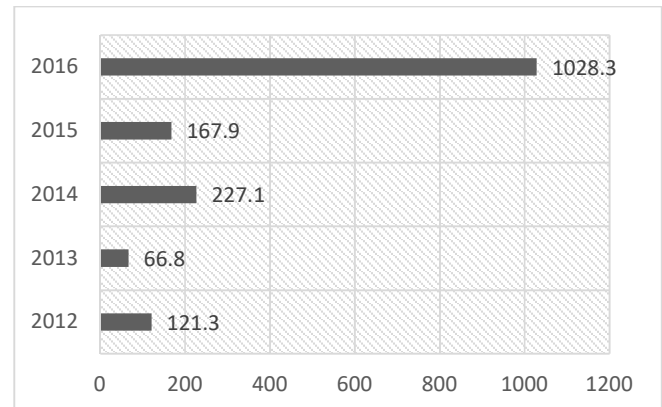


Source: Own work based on the data of the Ministry of Finance <https://www.mf.gov.pl/>, (access: 12.12.2018).

According to data from the Ministry of Finance, the year 2016 saw a significant increase (by 512%) in the foiling of disbursements of the undue but requested VAT return. As the

result, the state budget received over 1 billion PLN. In the period 2012-2015, tax inspectors questioned and did not reimburse VAT returns in the total amount of 120-230 million PLN (Figure 4). Thus, the total sum gained as the result of foiling undue VAT disbursements between 2012 and 2015 was lower than the amount obtained in 2016 alone.

FIGURE 4. THE VALUE OF THE RETAINED VAT RETURN IN 2012-2016, MILLION PLN



Source: Own work based on the data of the Ministry of Finance <https://www.mf.gov.pl/>, (access: 12.12.2018).

As of 2016, the Ministry of Finance improved the efficiency of its control procedures. The values estimated for a single tax-related control procedure increased by 20%, from 3.1 to 3.8 million PLN. Therefore, it can be said that the officials of the Ministry of Finance are now able to better select the entities to be inspected. In 2016, 83.6% of the inspections led to a detection of irregularities which was an increase of 1.2% when compared to 2015.

Currently, it is the National Revenue Administration (Polish: KAS) which is the body responsible for the efficiency of the tax system, fiscal control, tax collection and combating the grey area. KAS is a consolidated customs and fiscal agency which cooperates with tax control offices to increase the efficiency of VAT collection. At the same time, the role of the Police is emphasised in assisting the National Revenue Administration in its efforts to tighten the fiscal system. There are specially dedicated units of the Police which are engaged in economic matters. At the moment the headcount in such units is 4,100 officers. The Police intervention is being correlated with increased efficiency of VAT collection, more severe penalties for serious economic frauds and implementation of extended confiscation.

The reports of the National Police Headquarters published by 'Rzeczpospolita' indicated that in 2017 there were 190,000 economic offences. A year before the number was lower by 39,000 which means that in 2017 there were 16,000 economic crimes per month, which is 4 thousand more than in 2016. At the same time, despite strengthening of the law and greater efficiency of prosecution of economic malpractices, the extent of VAT fraud and excise duty fraud in the liquid fuels turnover is still worrying. The regions with the highest numbers of frauds on the liquid fuel market are: Silesia (36,000 offences), Lesser

Poland (30,000 offences) and Greater Poland (14,000 offences). These regions are the arena of the so called fuel mafia whose activity is going to develop as criminals and criminal groups are able to reshape rapidly. It is estimated that three quarters of organized criminal groups active in Poland specialise in economic frauds and drug business.

The 2017 report of the National Police Headquarters indicates that although detection of economic crimes is on the increase, the scope of the crime has not been reduced. Many criminals are still tempted by the easy money available on the liquid fuel market. In January 2018, the Regional Prosecutor in Warsaw seized a production company which was bought by members of the fuel mafia. This investment was financed with so-called 'dirty money' earned on illegal sales of diesel oil. According to the company owners, this type of purchase was the best way for them to varnish income from crime.

It is believed that greater efficiency of detecting crimes of economic nature and a consequent reduction of fuel-related offences, resulted from the adoption of the Act of 9 March 2017 on the monitoring system of the road transport of goods, commonly referred to as the SENT system. Under this act, entities that transport sensitive goods to and through the territory of the Republic of Poland are obliged to register the transport in an online system and if necessary update the entry on regular basis. However, there is also a negative aspect to the whole thing. Very often companies which do not conduct illegal activity are unnecessarily penalized for minor negligence, insufficient knowledge or weak information flow from the inspecting officials who are sometimes overeager in their search for offenders. Frequently, cisterns are inspected right after the loading at domestic oil bases which may not be adapted to the SENT system.

#### IV. CONCLUSIONS

The recently applied solutions e.g. fuel package, energy package and the transport package (SENT), led to the reduction of crime in the liquid fuels turnover. Traditional methods of evading regulations on the fuel market, such as decolourisation of heating oil using agricultural fuel and oil bases, are still in use but criminals have invented new methods e.g. smuggling fuel in vehicles which are not adapted to carry such substances. Although solutions like the SENT system are meant to limit the extent of criminal activity, sometimes they pose an excessive burden for law abiding entrepreneurs. What is really necessary, is strengthening the Energy Regulatory Office as a body coordinating the supervision over the industry and full utilization of the tools provided within the provisions of law. Also the concession process must be tightened and the enforcement of the new legislative packages perfected. The author proposes to increase the control at the borders and reduce the amount of inspections of fuel businesses inside the country. Taking into account that the National Revenue Administration has at its disposal modern mobile laboratories in which rapid and inoffensive checks can be conducted, there should be more control activity at the borders of the country. The results of such

checks allow to determine whether the fuel under examination comes from a legitimate source.

It is concluded that the effects of the new legislative tools proceed in the right direction in terms of reducing the scale of liquid fuel frauds. Elimination of non-registered trade of liquid fuels translates into growth in sales of domestic fuel companies and generates higher inflows into the state budget. However, it should be emphasised that those who make profit from illegal fuel trading constantly look for new ways to avoid regulations. In order to counteract this phenomenon it is necessary to integrate a number of state services and law enforcement agencies in a common effort to eliminate illegal activity on the Polish liquid fuel market.

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