

UDC 608+332.1+574

LEGAL CONDITIONS AND FISCAL POLICY FOR USING BIOFUELS IN POLAND

M. Musiał

Opole University

str. Ozimska, 46a, Opole, 45–058, Poland. E-mail: mmusial@uni.opole.pl

In the process of promotion the renewable energy resources using biofuels the EU not only concentrates on providing environmental protection but also takes into consideration principles of sustainable development. In this article legal and fiscal conditions for using biofuels in Poland are reviewed. Basic instrument for promotion the use of biofuels is formed by a system of exemptions and reductions of excise taxes. It is established that the current fiscal policy does not support investment in biofuel production in Poland, regulations are often unclear and spread over many legal acts. It is necessary to change the existed state, encouraging research and outreach, implementation an innovation policy in order to support the production of cheap and environmentally-sound biofuel, which does not distort food prices.

Key words: biofuels, fiscal policy, legal conditions for biofuel use, Poland.

ЗАКОНОДАВЧІ УМОВИ ТА ФІСКАЛЬНА ПОЛІТИКА ЩОДО ВИКОРИСТАННЯ БІОПАЛИВА В ПОЛЬЩІ

М. Мусял

Університет Ополье

вул. Озимська, 46а, Ополье, 45–058. Польща. E-mail: mmusial@uni.opole.pl

В процесі впровадження альтернативних джерел енергії, в тому числі, біопалива, Європейська Унія не тільки концентрує зусилля на забезпеченні екологічної безпеки, але й приймає до уваги принципи сталого розвитку. Розглянуто законодавчі підстави та фіскальну політику щодо використання біопалива в Польщі. Основним інструментом для заохочення використання біопалива є система скасування або зниження акцизних податків. Було встановлено, що існуюча на сьогодні податкова політика не сприяє інвестуванню у виробництво біопалива в Польщі, нормативні документи часто незрозумілі та охоплюють значну кількість законодавчих актів. Необхідними заходами є зміна існуючої ситуації, проведення наукових досліджень, впровадження інноваційної політики в напрямку підтримки виробництва дешевого та екологічно безпечного біопалива, яке не вступає в протиріччя із цінами на продукти харчування.

Ключові слова: біопалива, фіскальна політика, законодавчі умови для використання біопалива, Польща.

PROBLEM STATEMENT. In order to realize environmental and energy policy, the European Union (EU) puts different requirements, e.g., by way of Directives, on its member countries implying the need to change national laws. As a relatively new member country having transformed from a socialist to a market type economy during the last two decades, this is a great challenge for Poland. Maybe the most important issue in energy policy is secure access to resources. However, this should be in accordance with principles of sustainable development, in particular environmental protection. As biofuels are an important element in energy policy, it is tried in this article to give a review of legal regulations and fiscal conditions determining the development of the use of biofuels in Poland.

EXPERIMENTAL PART AND RESULTS OBTAINED. *Legal regulations for the biofuel market in Poland.* The EU Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport obliged the member states to initiate a legislative process in order to support the use of biofuels in their countries [1]. In Poland this led to the adoption of different legal acts directly or indirectly relating to the promotion of the use of biofuels. The most important acts are:

– Law from 25 August 2006 on bio components and liquid biofuels (Ustawa z dnia 25 sierpnia 2006 r. o biokomponentach i biopaliwach ciekłych (Dz.U. 2006 nr 169 poz. 1199 with later changes) [2],

– Law from 25 August 2006 on the system of monitoring and controlling fuel quality (Ustawa z dnia 25 sierpnia 2006 r. o systemie monitorowania i kon-

trolowania jakości paliw (Dz.U. 2006 nr 169 poz. 1200)) [3],

– Law from 27 May 2011 on changing the system of monitoring and controlling fuel quality and some other laws (Ustawa z dnia 27 maja 2011r. o zmianie ustawy o systemie monitorowania i kontrolowania jakości paliw oraz niektórych innych ustaw (Dz.U. 2011 nr 153 poz. 902)) [4],

– Decree of the Council of Ministers from 15 June 2007 regarding the National Indicative Targets for 2008-2013 (Rozporządzenie Rady Ministrów z dnia 15 czerwca 2007 r. w sprawie Narodowych Celów Wskaźnikowych na lata 2008-2013 (Dz.U. 2007 nr 110 poz. 757)) [5],

– Decision No. 134/2007 of the Council of Ministers from 24 June 2007 regarding Long-term Program of Promotion of Biofuels or other Renewable Fuels for 2008-2014 (Uchwała NR 134/2007 Rady Ministrów z dnia 24 lipca 2007 r. w sprawie Wieloletniego programu promocji biopaliw lub innych paliw odnawialnych na lata 2008 – 2014 (M.P. rok 2007, nr 53, poz. 607)) [6].

The law on bio components and liquid biofuels from 25 August 2006 replaced the unfortunate law from 2 October 2003 on bio components used in liquid fuels and liquid biofuels (Ustawa z 2 października 2003 r. o biokomponentach stosowanych w paliwach ciekłych i biopaliwach ciekłych (Law from 2 October 2003 on bio components used for liquid fuels and liquid biofuels) (Dz.U. 2003 nr 199 poz. 1934) [7]. The replaced law from 2003 contained many rigorous constraints for the development of biofuels. This law as criticized by different parties involved in the issue [8]. The new law not only should implement the EU directive, but also deal with the critique.

In this law, similar to the old one, biomass (which is used to produce biofuel) is, freely translated, defined as “solid or liquid substances from plant or animal origin, originating from products, waste and leftovers from agricultural (in particular raw materials), forest and industrial production, as well as other forms of waste, which are biodegradable.” It enlarged the notion of bio component, now including: bio ethanol, bio methanol, ester, dimethyl ether, clear plant oil and synthetic hydrocarbons.

The most important changes introduced by this law are [9]:

- the possibility to sell fuel completely produced from plant oils at gasoline stations,
- the possibility to trade oils with 20% esters added,
- the possibility to produce biodiesel for own use for agricultural producers.

The possibility for farmers to produce biodiesel for own use may be useful for larger farmers. However, production is only possible when the following conditions are fulfilled, which are related to bureaucratic and financial barriers:

- register as a producer of liquid biofuel for own use - the administrative unit is the President of the Agricultural Market Agency (*Prezes Agencji Rynku Rolnego*),
- possess proper equipment and buildings, fulfilling regulations in the field of fire safety, health and environmental protection,
- obtain a license to have a fiscal warehouse – biofuels are only allowed to be produced in a fiscal warehouse,
- quality requirements for the production of biofuels.

The use of any type of fuel requires the creation of legal regulations that on the one hand define quality requirements, while on the other hand creating possibilities for quality control. With this aim, the Law on the system of monitoring and controlling fuel quality was introduced. According to this law, in, among others, the following cases fuels are subject to control:

* Lack of data concerning real values for 2011–2012

- when applied in vehicles, agricultural tractors and machines used off-road,
- when used in installations producing energy and inland ships,
- when used in selected fleet,
- when used for own need in the framework of agricultural activity.

In 2009 the Decree of the Ministry of Economy on quality requirements for liquid biofuels (*Rozporządzenie Ministra Gospodarki z dnia 22 stycznia 2009 r. w sprawie wymagań jakościowych dla biopaliw ciekłych* (Dz.U. 2009 Nr 18, poz. 98)) [10] was adopted, defining specific quality requirements regarding methyl esters, diesel oil and petrol.

In order to fulfill EU requirements regarding the share of biofuel in total use of fuels, the *decree regarding the National Indicative Targets for 2008–2013* was adopted. Thus decree was supplemented by the *Decision ... regarding Long-term Program of Promotion of Biofuels or other Renewable Fuels for 2008–2014*. These documents identified the percentage share of biofuels in total fuel use between 2004 and 2013. In Fig. 1, the values of the National Indicative Targets (NIT) and the real value for this period are presented.

From 2004 on, the value of NIT should increase each year. Data show that the real value of use of biofuels in Poland increased. While in 2007, the first year data on the real value was available, the aim was not achieved, the aim was achieved in the following years. The reason why the real value for 2007 was only 0.68% was change in fiscal regulation, in particular the elimination of excise tax exemption, discussed more in detail below. The legal acts presented are an elementary part of the legal system supporting the use of biofuels in Poland. The acts contain modern solutions facilitating the realization of EU requirements, while at the same time creating a legal basis for quality control of produced and traded fuels.

Figure 1 – Value of indicators of use of biofuels in Poland 2004–2012

Source: Reports to the European Commission for 2004–2012 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport; *Rozporządzenie Rady Ministrów z dnia 15 czerwca 2007 r. w sprawie Narodowych Celów Wskaźnikowych na lata 2008–2013* (M.P. rok 2007, nr 53, poz. 607) (Decree of the Council of Ministers from 15 June 2007 regarding the National Indicative Targets for 2008–2013).

Fiscal conditions for biofuels in Poland. In accordance with the *Long-term Program of Promotion of*

Biofuels or other Renewable Fuels for 2008–2014, the basic instrument for supporting the use of biofuels is a

system of exemptions and reductions of excise taxes. While activities were undertaken to change legislation in this field, a problem is that tax reduction and exemption is treated by the EU as a form of public support requiring the agreement from the European Commission each time such an instrument is applied. Poland obtained approval for reductions of excise taxes on biofuels until 31 May 2011. In this section, an overview is provided of the forms of support applied in Poland in this field until this date.

In 2004 the Decree from the Ministry of Finance from 26 April 2004 regarding excise tax exemptions (Rozporządzenie Ministra Finansów z dnia 26 kwietnia 2004 r. w sprawie zwolnień od podatku akcyzowego (Dz.U. z 2004 r., Nr 97, poz. 966)) [11] came into force. The following excise tax reductions and exemptions were introduced [12]:

- 1,50 PLN (PLN = Polish Zloty) for each liter of bio component added to liquid fuel containing 2 % to 5 % bio components,
- 1,80 PLN for each liter of bio component added to liquid fuel containing 5 % to 10 % bio components,
- 2,20 PLN for each liter of bio component added to liquid fuel containing more than 10 % bio components.

These rates applied until 2006, and strongly contributed to the increase in the use of bio components in liquid fuels in Poland.

The next amendment to the system was introduced with the Law from 27 May 2011 on changing the system of monitoring and controlling fuel quality and some other laws (Ustawa z dnia 11 maja 2007 r. o zmianie ustawy o podatku akcyzowym oraz niektórych innych ustaw) [13]. The new regulations reduced the range of excise tax reductions:

- 1,565 PLN for each liter of bio component added to petrol containing at least 2% bio components,
- 1,048 PLN for each liter of bio components added to diesel containing esters,
- 10 PLN per 1000 liters of bio components being fuel itself.

In case of petrol and diesel, a limiting condition is that the total excise tax should not be lower than 10PLN per 1000 liters.

The changes strongly affected the biofuel market in Poland, and led to strong protests from the side of producers. The changes above all concerned the way in which fuel was defined. First, it was only written that fuel should contain a certain amount of bio components. In the new decree, petrol and diesel were distinguished, while the exemption for more than 10% bio components in fuel was eliminated. This may be an explanation for the decline in use of biofuels in 2007.

The unfavorable changes should be counteracted by additional measures regarding income tax for corporate bodies in the new law passed in 2007. According to the new law, an entrepreneur producing in accordance with regulations on biofuels having the right on excise tax exemption could now deduct a certain sum from its income tax. The entrepreneur could deduct “ ... 19% from the extra costs of producing bio components com-

pared to the costs of producing liquid fuels with the same caloric value, however, not more than 19% of the extra costs of producing bio components compared to the costs of producing liquid fuels calculated according to the average price of bio components and liquid fuels” [14].

On 8 July 2011 Poland sent a new proposal to the European Commission regarding excise tax exemptions. However, the new proposal would make the criteria to be fulfilled even more strict. In case of obtaining a positive opinion from the European Commission, excise tax exemptions could be obtained for the following products [15]:

- methyl esters being fuel itself (B100),
- petrol with minimum 80% bioethanol (B85).

The new rules reduced opportunities for producers to compensate for the higher costs of biofuel production. This effect is strengthened in case of declining prices of crude oil and reduced global economic growth. Furthermore, the situation is certainly not improved by the significant changes in the exchange rate of the PLN against the US dollar.

Table 1 – Components of petrol and diesel prices in Poland (March 2012)

Components	Petrol	Diesel
	Prices in PLN	
Oil	2.46	2.46
Refinery	0.39	0.56
Distribution	0.10	0.24
Excise tax	1.57	1.20
Fuel charge	0.10	0.24
VAT	1.06	1.08
Total	5.68	5.78

Source: <http://szczesniak.pl/2120> [accessed: 12.08.2012]

The development in financial policy regarding excise taxes between 2004 and 2011 worsened the financial incentives for producers of biofuel. The price of fuel in Poland is highly dependent on charges and taxes. The taxes on petrol and diesel are presented in Table 1. In case of petrol, the charges and taxes made up 48.06% of the total price in March 2012. The percentage was 43.6% for diesel.

CONCLUSIONS. There is much controversy on the use of first generation biofuels produced from agricultural inputs which also can be used for producing food. As a consequence, tax policy supporting this type of biofuels may even more distort prices in the food market. This issue is of great importance for poor countries and countries with relatively little cultivated area. This problem should be solved by second generation biofuels, using, among other things, waste products. While this can reduce production costs (less costs of production of the raw material for biofuel), the traditional fuels still have a cost advantage. The developments in fiscal

policy in Poland does not support investment in biofuel production, while, although rules have been created defining important issues for the development of the biofuel market, rules are often unclear and spread over many legal acts. Seen the legal changes, it is likely that fiscal support for biofuel production will slowly disappear. It is more likely that different ministries involved will develop specific instruments which are more easy to control.

Financial incentives, while putting pressure on the government budget in a situation of budget deficits (currently an extremely important issue in the context of the problems in Greece and other European states), are unlikely to solve problems for the biofuel market in the long run. It is necessary to provide research and development, innovation policy in order to support mass production of cheap and environmentally-sound biofuel, which does not distort food prices.

Materials were presented at the Students' workshop within «Third Vyshegrad Round-Table Discussion on Climate Change» (Banska Bystrica, Slovakia, July 1-2nd, 2012). Publication was supported by Small Alumni Grants Program, Public Affairs Section of the U. S. Embassy in Ukraine, N 12/169.

REFERENCES

1. Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:123:0042:0042:EN:PDF>
2. Ustawa z dnia 25 sierpnia 2006 r. o biokomponentach i biopaliwach ciekłych (Law from 25 August 2006 on bio components and liquid biofuels) (Dz.U. 2006 nr 169 poz. 1199 z późn. zm.) <http://isap.sejm.gov.pl/Download?id=WDU20061691199&type=3>.
3. Ustawa z dnia 25 sierpnia 2006 r. o systemie monitorowania i kontrolowania jakości paliw (Law from 25 August 2006 on the system of monitoring and controlling fuel quality) (Dz.U. 2006 nr 169 poz. 1200) <http://isap.sejm.gov.pl/Download?id=WDU20061691200&type=3>.
4. Ustawa z dnia 27 maja 2011r. o zmianie ustawy o systemie monitorowania i kontrolowania jakości paliw oraz niektórych innych ustaw (Law from 27 May 2011 on changing the system of monitoring and controlling fuel quality and some other laws) (Dz.U. 2011 nr 153 poz. 902) <http://isap.sejm.gov.pl/Download?id=WDU2011530902&type=3>.
5. Rozporządzenie Rady Ministrów z dnia 15 czerwca 2007 r. w sprawie Narodowych Celów Wskaźnikowych na lata 2008-2013 (Decree of the Council of Ministers from 15 June 2007 regarding the National Indicative Targets for 2008-2013) (Dz.U. 2007 nr 110 poz. 757) <http://isap.sejm.gov.pl/Download?id=WDU20071100757&type=2>.
6. Uchwała NR 134/2007 Rady Ministrów z dnia 24 lipca 2007 r. w sprawie Wieloletniego programu promocii biopaliw lub innych paliw odnawialnych na lata 2008 – 2014 (Decision No. 134/2007 of the Council of Ministers from 24 June 2007 regarding Long-term Program of Promotion of Biofuels or other Renewable Fuels for 2008–2014) (M.P. rok 2007, nr 53, poz. 607) <http://isap.sejm.gov.pl/Download?id=WMP20070530607&type=2>.
7. Ustawa z dnia 2 października 2003r. o biokomponentach stosowanych w paliwach ciekłych i biopaliwach ciekłych (Law from 2 October 2003 on bio components used for liquid fuels and liquid biofuels) (Dz.U. 2003 nr 199 poz. 1934).
8. Kupczyk A., Stan aktualny i perspektywy wykorzystania biopaliw transportowych w Polsce na tle UE. Cz. IV. Aktualne uwarunkowania i wykorzystanie biopaliw transportowych w Polsce. Biopaliwa II generacji (Actual state and perspectives for the use of transportation biofuels in Poland. Part IV. Current conditions and use of transportation biofuels in Poland. Second generation biofuels), „Energetyka”, nr 2, 2008, p. 151.
9. Kupczyk A., Borowski P., Kształtowanie uwarunkowań fiskalno-prawnych w zakresie biopaliw transportowych w Polsce (The fiscal and legal conditions regarding transport biofuels in Poland), [in:] P. Borowski, M. Powalka (e.d), Planowanie i zarządzanie w energetyce, SGGW 2009, PP. 5-21.
10. Rozporządzenie Ministra Gospodarki z dnia 22 stycznia 2009 r. w sprawie wymagań jakościowych dla biopaliw ciekłych (Decree of the Minister of Economy of 22 January 2009 regarding quality requirements for liquid biofuels) (Dz.U. 2009 Nr 18, poz. 98) <http://isap.sejm.gov.pl/Download?id=WDU20090180098&type=2>.
11. Rozporządzenie Ministra Finansów z dnia 26 kwietnia 2004 r. w sprawie zwolnień od podatku akcyzowego (Decree of the Ministry of Finance of 26 April 2004 regarding excise tax exemptions) (Dz.U. z 2004 r., Nr 97, poz. 966) <http://www.podatnik.info/aktywne/akt/pobierz/126>, Dz.U.+2004+nr+97+poz.+966.html.
12. Art. 1.2 from the Decree from the Ministry of Finance from 26 April 2004 regarding excise tax exemptions (Art. ust. 1 pkt 2 rozporządzenia Ministra Finansów z dnia 26 kwietnia 2004 r. w sprawie zwolnień od podatku akcyzowego) (Dz.U. z 2004 r., Nr 97, poz. 966).
13. Ustawa z dnia 27 maja 2011r. o zmianie ustawy o systemie monitorowania i kontrolowania jakości paliw oraz niektórych innych ustaw (Law from 27 May 2011 on changing the system of monitoring and controlling fuel quality and some other laws) (Dz.U. 2011 nr 153 poz. 902) <http://isap.sejm.gov.pl/Download?id=WDU2011530902&type=3>.
14. Art. 1 of the Law from 23 August 2007 on the change in the law on corporate income tax (Art. 1 ustawy z dnia 23 sierpnia 2007 r. o zmianie ustawy o podatku dochodowym od osób prawnych) (Dz.U. 2007 nr 169 poz. 1169).
15. Ministerstwo Rolnictwa i Rozwoju Wsi <http://bip.minrol.gov.pl/DesktopModules/Announcement/Vie>

wAnnouncement.aspx?ModuleID=1655&TabOrgID=1622&LangId=0&AnnouncementId=13526&ModulePositionId=2362 [access: 12.08.2012].

16. Report to the European Commission for 2004 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_1stReport2004/Poland%201st%20report%20Dir%202003%2030_EN.pdf

17. Second report to the European Commission for 2004 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_2ndReport2005/POLAND_2nd%20report%20Dir2003_30_report_EN.pdf

18. Report to the European Commission for 2005 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_3rdReport2006/Poland%203rd%20report%20Dir%202003%2030_EN.pdf

19. Report to the European Commission for 2006 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_4thReport2007/Poland%204th%20report%20Dir%202003%2030_EN.pdf

20. Report to the European Commission for 2007 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_5thReport2008/Poland%20_report%202008_en.pdf

21. Report to the European Commission for 2007 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport http://www.ebb-eu.org/legis/MS_6thReport2009/poland_2009_en.pdf

22. Raport za 2009 r. dla Komisji Europejskiej wynikający z art. 4 ust. 1 dyrektywy 2003/30/WE Parlamentu Europejskiego i Rady z dnia 8 maja 2003 r. w sprawie wspierania użycia w transporcie biopaliw i innych paliw odnawialnych (Report to the European Commission for 2009 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport) http://www.ebbeu.org/legis/MS_7thReport2010/poland_2010_pl.pdf

23. Raport za 2010 r. dla Komisji Europejskiej wynikający z art. 4 ust. 1 dyrektywy 2003/30/WE Parlamentu Europejskiego i Rady z dnia 8 maja 2003 r. w sprawie wspierania użycia w transporcie biopaliw i innych paliw odnawialnych (Report to the European Commission for 2010 under Article 4(1) of Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport) http://prawo.lego.pl/prawo/obwieszczenie_ministra-gospodarki-z-dnia-29-marca-2012-r-w-sprawie-ogloszenia-raportu-dla-komisji-europejskiej-dotyczacego-wspierania-uzycia-w-transporcie-biopaliw-lub-innych-paliw-odnawialnych-za/za11/

24. www.kzpr.com.pl

25. www.arr.gov.pl/

26. www.minrol.gov.pl

ЗАКОНОДАТЕЛЬНАЯ БАЗА И ФИСКАЛЬНАЯ ПОЛИТИКА ИСПОЛЬЗОВАНИЯ БИОТОПЛИВА В ПОЛЬШЕ

М. Муснал

Университет Ополе

ул. Озимская, 46а, Ополе, 45–058. Польша. E-mail: mmusial@uni.opole.pl

В процессе внедрения альтернативных источников энергии, в том числе, биотоплива, Европейский Союз не только концентрирует усилия на обеспечении экологической безопасности, но и принимает во внимание принципы устойчивого развития. Рассматривается законодательная база и фискальная политика по использованию биотоплива в Польше. Основным инструментом для поощрения использования биотоплива является система отмены или снижения акцизных налогов. Было установлено, что существующая фискальная политика не поддерживает инвестиции в производство биотоплива в Польше. Нормативные документы не всегда отражают текущую ситуацию и ссылаются на большое количество законодательных актов. Необходимо изменить существующую ситуацию по данному вопросу, в частности, за счет проведения научных исследований, внедрения инновационной политики по поддержанию производства дешевого и экологически безопасного биотоплива, которое не будет иметь противоречий с ценами на продукты питания.

Ключевые слова: биотопливо, фискальная политика, законодательные нормы использования биотоплива, Польша.

Стаття надійшла 13.09.2012.

Рекомендовано до друку
д.б.н., проф. Никифоровим В.В.