

**Question for written answer E-011338/2011
to the Commission**

Rule 117

Konrad Szymański (ECR)

Subject: Compliance of Polish law in force between 2004 and 2009 with Council Directives 2003/96/EC and 92/12/EEC

In view of the contradictory interpretations handed down by administrative courts on the matter of the taxation of energy products (lubricating oils), would the Commission answer the following questions:

1. Was Poland entitled, under Article 3(3) of Council Directive 92/12/EEC, to levy excise duty under national law during the period 2004-2009 on energy products (lubricating oils) within the meaning of Article 2(4)(b), indent 1 of Council Directive 2003/96/EC without providing for a separate tax for such products and while classifying them as products covered by the harmonised excise duty arrangements (harmonised excise goods) but at the same time providing for the exemption of some of them from excise duty under certain conditions?
2. When it made provision under its national rules for excise duty to be levied on lubricating oils used for purposes other than as motor fuels or as heating fuels, did Poland institute the procedure provided for in Article 20(2) of Council Directive 2003/96/EC?
3. Do Article 3(3) of Council Directive 92/12/EEC and the judgment of the Court of Justice in joined cases C-145/06 and C-146/06 entitle Poland freely to set the conditions under which processed lubricating oils sold in Poland for uses other than as motor fuels or as heating fuels may be exempted from duty?
4. Under the above directives, may non-harmonised products be treated in the same way as harmonised products in respect of which provision has been made for the granting of tax exemptions under additional conditions freely laid down by the Member State concerned?
5. When it adopted the Act of 23 January 2004 on excise duty and levied excise duty on lubricating oils used for purposes other than as motor fuels or as heating fuels, on the basis of a Court of Justice judgment, did Poland act in accordance with the requirements of Community law, with particular reference to Articles 25 and 90 of the EC Treaty?
6. Has the Commission looked into this matter, and, in its view, has Poland correctly implemented Council Directives 2003/96/EC and 92/12/EEC?
7. Does the Commission intend to take steps to ensure that the law is not infringed in any way and that provisions on energy products used for non-energy purposes do not hamper lawful trade between Member States and do not undermine competitiveness vis-à-vis other entities in EU Member States? If so, what will those steps be?