



The pollution tax introduced by Romanian legislation, levied on vehicles on first registration in Romania, is contrary to EU law

That legislation has the effect of discouraging the import and placing in circulation of second-hand vehicles purchased in other Member States

Romanian legislation introduced with effect from 1 July 2008 a pollution tax payable on first registration of a motor vehicle in Romania. The legislation does not distinguish between vehicles manufactured in that Member State and those manufactured abroad. Similarly, it does not distinguish between new and second-hand vehicles.

Mr Tatu, a Romanian national, resides in Romania and bought a second-hand vehicle in Germany in July 2008 for €6 600. The vehicle had a cylinder capacity of 2 155 cm³ and complied with pollution standard Euro 2. It was manufactured in 1997 and registered in Germany in that year.

To be able to register the vehicle in Romania, Mr Tatu had to pay RON 7 595 (approximately €2 200) as pollution tax. As he considered the tax to be contrary to European Union law, he sought reimbursement of the amount paid. His argument is that the tax is incompatible with European Union law because it is charged on all second-hand vehicles imported into Romania from other Member States and registered for the first time in Romania, whereas it is not charged on similar vehicles already registered in Romania when they are resold as second-hand vehicles.

The Tribunalul Sibiu (Sibiu District Court, Romania), which is hearing the case, has put a question to the Court of Justice on the compatibility of that legislation with European Union law.

By its judgment of today, the Court of Justice recalls that European Union law prohibits all Member States from imposing on products of the other Member States internal taxation in excess of that imposed on similar domestic products. That prohibition seeks to guarantee the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products.

Next, the Court notes that the system of taxation introduced by the Romanian legislation does not distinguish between vehicles according to their origin or between the owners of those vehicles according to their nationality. The tax is payable regardless of the nationality of the owner of the vehicle, the Member State in which it was produced, and whether the vehicle is purchased on the domestic market or imported.

However, even if the conditions for **direct discrimination** are not met, internal taxation may be indirectly discriminatory as a result of its effects.

To ascertain whether the tax creates **indirect discrimination** between imported second-hand motor vehicles and similar second-hand motor vehicles which are already on national territory, the Court examines, **first**, whether the tax is neutral from the point of view of competition between imported second-hand vehicles and similar second-hand vehicles which were previously registered on national territory and were subject on that registration to the tax in question. **Secondly**, the Court examines the neutrality of the tax between imported second-hand vehicles and similar

second-hand vehicles which were already registered on national territory before the entry into force of the tax on 1 July 2008.

As regards the **first aspect of neutrality of the tax**, the Court recalls that there is a breach of European Union law where the amount of tax levied on an imported second-hand vehicle exceeds the residual tax incorporated in the value of similar second-hand vehicles already registered on national territory.

In this respect, the Court finds that the Romanian legislation is consistent with EU law, since it takes account, in calculating the tax on registration, of the depreciation of the vehicle and thus ensures that the tax does not exceed the residual tax incorporated in the value of similar second-hand vehicles which were previously registered on national territory and were subjected to the tax when they were registered.

By contrast, as regards the **second aspect of neutrality of the tax**, the Court finds that the Romanian legislation has the effect that imported second-hand vehicles of considerable age and wear are – despite the application of a large reduction in tax to take account of depreciation – subject to a tax which may approach 30% of their market value, while similar vehicles offered for sale on the domestic second-hand vehicle market are not burdened by such a tax charge.

In those circumstances, the legislation has the effect of discouraging the import and placing in circulation in Romania of second-hand vehicles purchased in other Member States.

Although EU law does not prevent the Member States from introducing new taxes, it does require each Member State to select and arrange taxes on motor vehicles in such a way that they do not have the effect of promoting sales of domestic second-hand vehicles and so discouraging imports of similar second-hand vehicles.

The Court therefore rules that EU law precludes a Member State from introducing a pollution tax levied on motor vehicles on their first registration in that Member State if that tax is arranged in such a way that it discourages the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355