



Press and Information

Court of Justice of the European Union

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Judgment in Case C-591/17
Austria v Germany

The German vignette for the use by passenger vehicles of federal roads is contrary to EU law

The charge is discriminatory since the economic burden of the charge falls, de facto, solely on the owners and drivers of vehicles registered in other Member States

From 2015, Germany has put in place a legal framework for the introduction of a charge for the use by passenger vehicles of federal roads, including motorways: the 'infrastructure use charge'.

By that charge, Germany intends to move in part from a system of financing by means of taxation to a system of financing based on the 'user pays' and 'polluter pays' principles. The revenue from that charge will be entirely allocated to financing the road infrastructure, the amount of which will be calculated on the basis of cylinder capacity, the type of engine and the emission standard of the vehicle.

Every owner of a vehicle registered in Germany will have to pay the charge, in the form of an annual vignette, of no more than €130. For vehicles registered abroad, payment of the charge will be required (of the owner or the driver) for use of the German motorways. In that regard, a 10 day vignette is available costing between €2.50 and € 25, a 2 month period costing between €7 and €50 and annual vignettes are available, at no more than a maximum of €130.

In parallel, Germany has provided that, from the revenue from the infrastructure use charge, the owners of vehicles registered in Germany will qualify for relief from the motor vehicle tax to an amount that is at least equivalent to the amount of the charge that they will have had to pay.

Austria considers that, on the one hand, the combined effect of the infrastructure use charge and the relief from motor vehicle tax for vehicles registered in Germany and, on the other, the structuring and application of the infrastructure use charge are contrary to EU law, in particular the prohibition of discrimination on the grounds of nationality.

Having brought the matter before the Commission for an opinion, which was not delivered within the prescribed period, Austria brought infringement proceedings against Germany before the Court¹. In these proceedings, Austria is supported by the Netherlands whereas Germany is supported by Denmark.

In today's judgment, the Court finds that **the infrastructure use charge, in combination with the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany, constitutes indirect discrimination on grounds of nationality and is in breach of the principles of the free movement of goods and of the freedom to provide services.**

As regards the prohibition of discrimination on grounds of nationality, the Court finds that the effect of the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany is to offset entirely the infrastructure use charge paid by those persons, with

¹ It is very rare for a Member State to bring infringement proceedings against another Member State. The present action is the seventh of a total of eight in the history of the Court (see for the first six, Press Release [No 131/12](#); the eighth case is pending: Slovenia v Croatia, [C-457/18](#)).

the result that the economic burden of that charge falls, de facto, solely on the owners and drivers of vehicles registered in other Member States.

It is true that it is open to the Member States to alter the system for the financing of their road infrastructure by replacing a system of financing by means of taxation with a system of financing by all users, including the owners and drivers of vehicles registered in other Member States who use that infrastructure, so that all those users contribute in an equitable and proportionate way to that financing. However, such alteration must comply with EU law, in particular the principle of non-discrimination, which is not so in the present case.

In the present case, it is not possible to agree with the argument of Germany, in particular, that relief motor vehicle tax for the owners of vehicles registered in that Member State is a reflection of movement to a system of financing of road infrastructure by all users, pursuant to the 'user pays' and 'polluter pays' principles.

Having produced no details of the extent of the contribution of the charge to the financing of federal infrastructure, Germany has in no way established that the compensation granted to the owners of vehicles registered in Germany, in the form of relief from motor vehicle tax to an amount at least equivalent to the amount of the infrastructure use charge which they were required to pay, does not exceed that contribution and is therefore appropriate.

Furthermore, with respect to owners of vehicles registered in Germany, the infrastructure use charge is payable annually without any opportunity to choose a vignette for a shorter period if that better corresponds to the frequency of his use of those roads. Those factors, coupled with relief from the motor vehicle tax to an amount that is at least equivalent to the amount paid with respect to that charge, demonstrate that the movement to a system of financing based on the 'user pays' and 'polluter pays' principles affects the owners and drivers of vehicles registered in other Member States exclusively, whereas the principle of financing by means of taxation continues to apply with respect to owners of vehicles registered in Germany.

Moreover, Germany has not established how the discrimination found to arise could be justified by environmental or other considerations.

As regards the free movement of goods, the Court finds that the measures at issue are liable to restrict the access to the German market of goods from other Member States. The infrastructure use charge to which, in reality, only vehicles that carry those goods are subject is liable to increase the costs of transport and, as a consequence, the price of those goods, thereby affecting their competitiveness.

As regards the freedom to provide services, the Court finds that the national measures at issue are liable to restrict the access to the German market of service providers and service recipients from another Member State. The infrastructure use charge is liable, because of the relief from motor vehicle tax, either to increase the cost of services supplied in Germany by those service providers or to increase the cost for those service recipients inherent in travelling into Germany in order to be supplied with a service there.

However, contrary to what is claimed by Austria, the Court finds that the rules for the structuring and application of the infrastructure use charge are not discriminatory. This concerns the random inspections, any prohibition on continuing the journey using the vehicle concerned, the recovery a posteriori of the infrastructure use charge, the possible imposition of a fine and the payment of a security.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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

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Pictures of the delivery of the judgment is available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106