Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 April 2015*

(Reference for a preliminary ruling — Internal taxation — Article 110 TFEU — Tax levied by a Member State on motor vehicles at the time of their first registration or of the first transfer of the right of ownership — Neutrality as between second-hand motor vehicles imported from other Member States and similar motor vehicles available on the domestic market)

In Case C-76/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Braşov (Romania), made by decision of 29 January 2014, received at the Court on 12 February 2014, in the proceedings

Mihai Manea

v

Instituția Prefectului județul Brașov — Serviciul public comunitar regim de permise de conducere și înmatriculare a vehiculelor,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič (Rapporteur), L. Bay Larsen, T. von Danwitz and J.-C. Bonichot, Presidents of Chambers, A. Arabadjiev, M. Safjan, D. Šváby, M. Berger, A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Manea, by R. Cătălin, avocat,

— the Romanian Government, by R.H. Radu, acting as Agent, and by V. Angelescu and D.M. Bulancea, acting as advisers,

— the European Commission, by R. Lyal and G.-D. Bălan, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 February 2015,

* Language of the case: Romanian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 110 TFEU.

2 The request has been made in proceedings between Mr Manea and the Instituția Prefectului județul Brașov — Serviciul public comunitar regim de permise de conducere și înmatriculare a vehiculelor (the competent authority for the registration of vehicles in Brașov (Romania)) concerning a tax which Mr Manea was required to pay in order to register in Romania a second-hand motor vehicle imported from another Member State.

Legal context

EU law

3 The 'European emissions standards' reflect the acceptable limits for exhaust emissions of new motor vehicles sold in the Member States of the European Union. The first of those standards (commonly known as 'Euro 1') was introduced by Council Directive 91/441/EEC of 26 June 1991 amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles (OJ 1991 L 242, p. 1), which entered into force on 1 January 1992. Since then, the rules in this area have become progressively stricter, with the aim of improving air quality in the European Union.

4 Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1) distinguishes between Category M vehicles, comprising 'Motor vehicles with at least four wheels designed and constructed for the carriage of passengers', and Category N vehicles, which are 'Motor vehicles with at least four wheels designed and constructed for the carriage of goods'. Those categories are subdivided according to the number of seats and the maximum mass (Category M) or the maximum mass only (Category N).

Romanian law

5 Law No 343/2006 of 17 July 2006 amending and supplementing Law No 571/2003 on the Tax Code (Legea nr. 343/2006 pentru modificarea și completarea Legii nr. 571/2003 privind Codul fiscal) (*Monitorul Oficial al României*, Part I, No 662 of 1 August 2006) introduced, into the Tax Code, a special tax on motor vehicles, applicable from 1 January 2007 and payable at the time of the first registration of that vehicle in Romania ('the special tax').

6 Government Emergency Order No 50/2008 of 21 April 2008 introducing the motor vehicle pollution tax (Ordonanță de Urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule) (*Monitorul Oficial al României*, Part I, No 327 of 25 April 2008; 'OUG No 50/2008'), applicable from 1 July 2008, imposed a pollution tax on vehicles in categories M1 to M3 and N1 to N3. That tax was payable in particular at the time of the first registration of such a vehicle in Romania.

7 OUG No 50/2008 was amended several times, before being repealed by Law No 9/2012 of 6 January 2012 concerning the tax on pollutant emissions from motor vehicles (Legea nr. 9/2012 privind taxa pentru emisiili poluante provenite de la autovehicule) (*Monitorul Oficial al României*, Part I, No 17 of 10 January 2012; 'Law No 9/2012'), which entered into force on 13 January 2012.

8 In the same way as OUG No 50/2008, Law No 9/2012 imposed a pollution tax on motor vehicles in categories M1 to M3 and N1 to N3.

9 Under Article 4(1) of Law No 9/2012, the obligation to pay that tax arose, inter alia, at the time of the first registration of a motor vehicle in Romania.

10 Under Article 4(2) of that law, the obligation to pay that tax also arose, in certain conditions, at the time of the first transfer, in Romania, of ownership of a second-hand motor vehicle. That provision was worded as follows:

'Liability to pay the tax shall also arise at the time of the first transfer in Romania of ownership of a second-hand motor vehicle in respect of which neither the special tax on passenger vehicles and motor vehicles provided for in Law No 571/2003, as subsequently amended and supplemented, nor the tax on pollutant emissions from motor vehicles has been paid, and which does not come within the category of vehicles exempted or exonerated from payment of those taxes, under the law in force at the time of its registration.'

11 The concept of the 'first transfer of ownership' referred, as stated in Article 2(i) of Law No 9/2012, to the 'the first transfer of the ownership of a second-hand vehicle, after the entry into force of the present law'.

12 However, Government Emergency Order No 1/2012 of 30 January 2012 relating to the suspension of the application of certain provisions of Law No 9/2012 concerning the tax on pollutant emissions from motor vehicles and to the repayment of the tax paid pursuant to Article 4(2) of that law (Ordonanță de Urgență a Guvernului nr. 1/2012 pentru suspendarea aplicării unor dispoziții ale Legii nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule, precum și pentru restituirea taxei achitate in conformitate cu prevederile art. 4 alin. 2 din lege) (*Monitorul Oficial al României*, Part I, No 79 of 31 January 2012; 'OUG No 1/2012'), which entered into force on 31 January 2012, suspended the application of Article 4(2) of Law No 9/2012 until 1 January 2013. OUG No 1/2012 also provided that taxpayers who had paid that tax in accordance with Article 4(2) during the period between the date of the entry into force of Law No 9/2012 and the date of the entry into force of OUG No 1/2012 were entitled to a refund thereof.

13 Article 6 of Law No 9/2012 provided:

'1. The amount of the tax shall be calculated as follows on the basis of the factors laid down in Annexes 1 to 5:

(a) for motor vehicles in category M1 and satisfying emissions standard Euro 3, Euro 4, Euro 5 or Euro 6:

(1) For motor vehicles satisfying emissions standard Euro 5, Euro 4 or Euro 3, the tax shall be calculated on the basis of the vehicle's emissions of carbon dioxide (CO_2), and the specific tax expressed in euro per gramme of CO_2, referred to in Annex 1, together with the pollution class and the specific tax expressed in euro/cm^3 referred to in Annex 2, less any reduction as shown in column 2 of Annex 4, in accordance with the following formula:

Amount payable = $[(A \times B \times 30\%) + (C \times D \times 70\%)] \times (100 - E)\%$,

where:

A = combined CO_2 emissions, expressed in grammes/km;

B = the tax on pollutant emissions, expressed in euro per gramme of CO_2, referred to in column 3 of Annex 1;

C = engine size (cubic capacity);

D = the tax on pollutant emissions according to engine size referred to in column 3 of Annex 2;

E = the percentage reduction of the tax specified in column 2 of Annex 4;

(2) For motor vehicles satisfying emissions standard Euro 6, the tax shall be calculated on the basis of the formula set out in point 1, from the time of the entry into force of standard Euro 6 for the registration, sale and entry into service of new vehicles …;

(b) for motor vehicles within category M1 having a non-Euro pollution standard or pollution standard Euro 1 or Euro 2, and for which no combined value of CO_2 emissions has been specified, in accordance with the following formula:

Amount payable = C × D × (100 − E): 100;

where:

C = engine size (cubic capacity);

D = the tax on pollutant emissions according to engine size referred to in column 3 of Annex 2;

E = the percentage reduction of the tax specified in column 2 of Annex 4;

…

3. The percentage reduction of the tax … shall be established by reference to the age of the motor vehicle.

4. On calculation of the tax, additional reductions of the percentage reduction specified in Annex 4 shall be granted by reference to the variation from the standard of the factors on the basis of which the fixed percentage was assessed, if the person who requests the registration or, as the case may be, the first transfer of the right of ownership of a second-hand motor vehicle declares under his own responsibility that the annual average kilometrage of the vehicle at issue is greater than the annual average kilometrage considered to be standard for the category of vehicle in question, under the regulations implementing [Law No 9/2012 concerning the tax on pollutant emissions from motor vehicles (Normele metodologice de aplicare a Legii nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule, *Monitorul Oficial al României*, Part I, No 29 of 13 January 2012; 'the Implementing Regulations')]. In those circumstances, the calculation of the tax shall be carried out on the basis of the percentage reduction laid down in Annex 4, increased by the additional percentage reduction laid down in Annex 5. As the new percentage reduction is greater than 90%, the percentage reduction to be applied is 90%.

5. The amount of the tax payable, calculated in accordance with the provisions of paragraph 1, may also be adjusted where the person requesting registration or, as the case may be, the first transfer of the right of ownership of a second-hand motor vehicle demonstrates, on the basis of a technical

inspection carried out by the Romanian Automobile Register, that the depreciation of a second-hand vehicle's value exceeds that indicated in the fixed scale in Annex 4 pursuant to the [Implementing Regulations].

6. The age of the vehicle shall be calculated by reference to the date of its first registration.

7. Where the person requesting the registration or, as the case may be, the first transfer of the right of ownership of a motor vehicle is unable to prove the date of that vehicle's first registration, the tax shall be calculated by reference to the date of the vehicle's manufacture.'

14 Under Article 9 of Law No 9/2012:

'1. The amount of the tax may be challenged if a person who is to register, or transfer the right of ownership of, a second-hand motor vehicle can demonstrate that the value of his vehicle has depreciated to an extent greater than that set out in the fixed scale in Annex 4.

2. The level of depreciation shall be assessed on the basis of the factors taken into consideration in establishing the percentage reduction referred to in Article 6(4).

3. In the event of a challenge, the characteristics of the second-hand motor vehicle referred to in paragraph 2 shall be determined, at the request of the taxpayer, by a technical inspection carried out in return for a fee by the Romanian Automobile Register on the basis of the procedure laid down by the [Implementing Regulations].

4. The fee for the technical report shall be fixed by the Romanian Automobile Register according to the operations required by the inspection and must not exceed the cost thereof.

5. The result of the technical inspection shall be recorded in a document drawn up by the Romanian Automobile Register, containing the information corresponding to each of the factors referred to in paragraph 2 and the resulting percentage reduction.

6. The document detailing the result of the technical inspection drawn up by the Romanian Automobile Register shall be submitted by the taxpayer to the competent tax authority.

7. On receipt of the document referred to in paragraph 6, the competent tax authority shall recalculate the amount to be paid in respect of the tax, which may lead to reimbursement of the difference in relation to the tax paid at the time of the registration or transfer of the right of ownership of a second-hand motor vehicle.

…'

15 Article 11 of Law No 9/2012 provided:

'A person who is dissatisfied with the response to the challenge may bring an action before the competent courts in accordance with the law.'

16 Annex 4 to Law No 9/2012 provided:

'Scale of percentage reductions of the pollution tax

Age of the Vehicle	Percentage reduction (%)
New	0

≤ 1 month 3

> 1 month — 3 months inclusive 5

> 3 months — 6 months inclusive 8

> 6 months — 9 months inclusive 10

> 9 months — 1 year inclusive 13

> 1 year — 2 years inclusive 21

> 2 years — 3 years inclusive 28

> 3 years — 4 years inclusive 33

> 4 years — 5 years inclusive 38

> 5 years — 6 years inclusive 43

> 6 years — 7 years inclusive 49

> 7 years — 8 years inclusive 55

> 8 years — 9 years inclusive 61

> 9 years — 10 years inclusive 66

> 10 years — 11 years inclusive 73

> 11 years — 12 years inclusive 79

> 12 years — 13 years inclusive 84

> 13 years — 14 years inclusive 89

> 14 years 90.'

17 Article 6(1) of the Implementing Regulations provided:

'The amount representing the tax payable, calculated in accordance with the provisions of Article 6 of the Law, may be adjusted where the motor vehicle for which one of the transactions specified in Article 4 of the Law is requested falls outside the reference parameters for a standard motor vehicle and which are:

(a) annual average standard kilometrage:

— M1 — 15 000 km;

— N1 — 30 000 km;

— M2 and N2 — 60 000 km;

— M3 and N3 — 100 000 km;

(b) the standard general condition specific to a motor vehicle which satisfies all the technical conditions required for type approval and the periodic technical inspection, in accordance with the legislation in force, the coachwork of which shows no signs of corrosion or damage, which has not been resprayed, the upholstery of which is clean and undamaged, and the instruments of which are in proper working order;

(c) standard equipment: air-conditioning, ABS and airbag;

(d) age of the vehicle.'

18 Law No 9/2012 remained in force up to 14 March 2013 inclusive.

19 Government Emergency Order No 9/2013 of 19 February 2013 concerning the environmental stamp duty in respect of motor vehicles (Ordonanța de urgență nr. 9/2013 privind timbrul de mediu pentru autovehicule) (*Monitorul Oficial al României*, Part I, No 119 of 4 March 2013; 'OUG No 9/2013'), repealing Law No 9/2012, entered into force on 15 March 2013.

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 At the beginning of 2013, Mr Manea sought to register, in Romania, a second-hand motor vehicle which he had purchased in Spain. The vehicle was a category M1 vehicle. It had been registered as a new vehicle in Spain in 2005.

21 By letter of 5 March 2013, the competent Romanian authority made that registration conditional on payment of the tax provided for by Law No 9/2012.

22 As he took the view that Law No 9/2012 is incompatible with Article 110 TFEU, Mr Manea brought an action before the Tribunalul Brașov (Court of First Instance, Brașov), requesting it to order that authority to register the vehicle at issue without requiring payment of that tax.

23 By decision of 24 September 2013, the Tribunalul Brașov dismissed that action. Mr Manea lodged an appeal with the Curtea de Apel Brașov (Court of Appeal, Brașov) against that decision.

24 While specifying that, according to its own case-law, Law No 9/2012 is compatible with Article 110 TFEU, the Curtea de Apel Brașov states that another Romanian appellate court has handed down a judgment reaching the opposite conclusion and that it is for that reason necessary to seek a preliminary ruling from the Court of Justice in order to ensure uniform application of EU law.

25 In those circumstances, the Curtea de Apel Brașov decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Having regard to the provisions of Law No 9/2012 and to the subject of the tax provided for under that law, must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions applicable to all foreign motor vehicles upon their registration in that Member State, but to national motor vehicles upon the transfer of ownership of such vehicles, except where such a tax or a similar tax has already been paid?

(2) Having regard to the provisions of Law No 9/2012 and to the subject of the tax provided for under that law, must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions which is applicable, in the case of all foreign motor vehicles, upon their registration in that Member State, but which, in the case of national motor vehicles, is due only on the transfer of ownership of such vehicles, the result being

that a foreign vehicle cannot be used unless the tax is paid, but a national vehicle can be used for an unlimited time without the tax being paid, until the ownership of that vehicle is transferred, if such a transfer takes place?'

26 The Romanian Government has requested, under the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, that the Court sit in a Grand Chamber.

Consideration of the questions referred

27 By its questions, which should be examined together, the referring court asks, in essence, whether Article 110 TFEU must be interpreted as precluding a Member State, first, from establishing a tax on motor vehicles which is levied on imported second-hand motor vehicles at the time of their first registration in that Member State and on motor vehicles already registered in that Member State at the time of the first transfer within that State of ownership of such vehicles, and, secondly, from exempting from that tax motor vehicles already registered in respect of which a tax previously in force has been paid.

28 It must be pointed out that the aim of Article 110 TFEU is to ensure free movement of goods between Member States in normal conditions of competition. It is intended to eliminate all forms of protection which may result from the application of internal taxation, in particular those which discriminate against products from other Member States (see to that effect, judgments in *Commission* v *Denmark*, C-47/88, EU:C:1990:449, paragraph 9; *Brzeziński*, C-313/05, EU:C:2007:33, paragraph 27; *Kalinchev*, C-2/09, EU:C:2010:312, paragraph 37; and *X*, C-437/12, EU:C:2013:857, paragraph 26).

29 To that end, the first paragraph of Article 110 TFEU 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 Treaty provision seeks to guarantee the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (see, to that effect, judgments in *Commission* v *Denmark*, C-47/88, EU:C:1990:449, paragraphs 8 and 9; *Weigel*, C-387/01, EU:C:2004:256, paragraph 66; and *X*, C-437/12, EU:C:2013:857, paragraph 29).

30 In order to determine whether a tax, such as that at issue in the main proceedings, gives rise to discrimination, it is first necessary to examine, in the light of the referring court's questions and the observations submitted to the Court, whether that tax is neutral from the point of view of competition between second-hand vehicles imported from Member States other than Romania and similar Romanian vehicles which have been registered within national territory without payment of a similar tax. It will then be necessary to examine the neutrality of that tax as between second-hand vehicles from Member States other than Romania and similar second-hand domestic vehicles which were taxed at the time of their registration.

31 In this respect, it is settled case-law that second-hand vehicles imported from other Member States, which constitute 'products of other Member States' within the meaning of Article 110 TFEU, are vehicles placed on the market in Member States other than the Member State concerned and can, in the case of purchase by a resident of that latter Member State, be imported and placed in circulation in that Member State, while similar domestic vehicles, which constitute 'domestic products', within the meaning of Article 110 TFEU, are second-hand motor vehicle of the same type, characteristics and wear which are placed on the market in that Member State (see, inter alia, judgments in *Commission* v *Denmark*, C-47/88, EU:C:1990:449, paragraph 17; *Kalinchev*, C-2/09, EU:C:2010:312, paragraphs 32 and 40; and *Tatu*, C-402/09, EU:C:2011:219, paragraph 55).

32 Consequently, it is unnecessary to examine the neutrality required by Article 110 TFEU by taking into account the motor vehicles circulating in Romania which are not placed on the market. As the Advocate General stated in point 16 of his Opinion, by reason of the fact that they have not been offered for sale, those vehicles are not in competition with other vehicles, whether those available on the domestic market or those available on the market of other Member States.

Neutrality of the tax from the point of view of competition between second-hand motor vehicles imported from other Member States and similar domestic vehicles already registered in the Member State concerned without payment of tax

33 In the application of Article 110 TFEU, and in particular in the comparison of the taxes applicable to imported second-hand cars with those applicable to second-hand cars which are already on national territory, it is necessary to have regard not only to the rate of tax but also to the basis of assessment and the detailed rules for levying the tax in question (see, to that effect, judgments in *Commission* v *Denmark*, C-47/88, EU:C:1990:449, paragraph 18; *Nunes Tadeu*, C-345/93, EU:C:1995:66, paragraph 12; and *Commission* v *Greece*, C-74/06, EU:C:2007:534, paragraph 27).

34 More specifically, a Member State may not charge tax on imported second-hand motor vehicles based on a value which is higher than the real value of the vehicle, with the result that they are taxed more heavily than similar second-hand cars on the domestic market. Therefore, in order to avoid discriminatory taxation, the actual depreciation of second-hand vehicles should be taken into account (judgments in *Weigel*, C-387/01, EU:C:2004:256, paragraph 70, and *Commission* v *Greece*, C-74/06, EU:C:2007:534, paragraph 28).

35 Taking this into account need not necessarily involve an assessment or inspection of every vehicle. Avoiding the burden inherent in such a system, a Member State might be able to establish, by means of fixed scales determined by statute, regulation or administrative provision and calculated on the basis of criteria such as a vehicle's age, kilometrage, general condition, method of propulsion, make or model, a value for second-hand vehicles which, as a general rule, would be very close to their actual value (judgments in *Gomes Valente*, C-393/98, EU:C:2001:109, paragraph 24; *Weigel*, C-387/01, EU:C:2004:256, paragraph 73; *Commission* v *Greece*, C-74/06, EU:C:2007:534, paragraph 29; and *Tatu*, C-402/09, EU:C:2011:219, paragraph 41).

36 Those objective criteria for assessing the depreciation of motor vehicles have not been listed by the Court as being obligatory. They need not thus necessarily be applied cumulatively. However, the application of a scale based on a single criterion of depreciation, such as the age of the motor vehicle, does not guarantee that the scale will reflect the actual depreciation of those vehicles. In particular, given the failure to take account of the kilometrage, such a scale does not, as a general rule, lead to a reasonable approximation of the actual value of imported second-hand vehicles (judgments in *Commission* v *Greece*, C-74/06, EU:C:2007:534, paragraphs 37 to 43, and *Tatu*, C-402/09, EU:C:2011:219, paragraph 42).

37 In the present case, it is quite clear from the documents submitted to the Court that the amount of the tax at issue in the main proceedings is determined, first, according to parameters reflecting to a certain degree the pollution caused by the vehicle, such as its cylinder capacity and the Euro standard to which it corresponds, and, second, by taking the depreciation of that vehicle into account. That depreciation, which leads to a reduction of the amount obtained on the basis of the environmental parameters, is determined by reference not only to the age of the vehicle (factor E in the formulae set out in Article 6(1) of Law No 9/2012) but also, as follows from Article 6(4) of Law No 9/2012 and Article 6(1) of the Implementing Regulations, to the annual average kilometrage of the vehicle, provided that the taxpayer has declared that kilometrage. Moreover, if the taxpayer takes the view that the age and actual annual average kilometrage do not correctly and sufficiently reflect the actual

depreciation in the value of the vehicle, he may, under Article 9 of Law No 9/2012, request that the depreciation be determined by means of an inspection, the cost of which, to be borne by the taxpayer, may not exceed the cost of the operations involved in that inspection.

38 By introducing into the calculation of the tax the vehicle's age and annual average kilometrage, and by adding to those criteria the option of taking into account, at non-excessive cost, the condition of the vehicle and its equipment by means of an inspection by the competent motor vehicle registration authority, legislation such as that at issue in the main proceedings ensures that the tax will be reduced in accordance with a reasonable approximation of the actual value of the vehicle (see, by analogy, judgment in *Tatu*, C-402/09, EU:C:2011:219, paragraph 44).

39 This conclusion is borne out by the fact that, in the fixed scales set out in Annex 4 to Law No 9/2012, due account is taken of the circumstance that the annual depreciation in the value of motor vehicles is generally more than 5% and is not linear, particularly in the first years of circulation, in which it is much greater than subsequently (see, by analogy, judgment in *Tatu*, C-402/09, EU:C:2011:219, paragraph 45).

40 Moreover, the Romanian legislature was entitled to take the view that the depreciation criteria relating to the condition of the vehicle and its equipment can be correctly applied only by having recourse to an individual inspection of that vehicle by an expert, and that, in order to prevent inspections from taking place too often and thereby imposing an administrative and financial burden on the system, the taxpayer should be required to bear the cost of the inspection (see, by analogy, judgment in *Tatu*, C-402/09, EU:C:2011:219, paragraph 46).

41 By contrast to the special tax levied during the period from 1 January 2007 to 30 June 2008, the pollution tax levied pursuant to OUG No 50/2008 during the period from 1 July 2008 to 12 January 2012 and the pollution tax levied pursuant to Law No 9/2012, as applicable during the period from 13 January 2012 to 1 January 2013, the tax on pollution levied pursuant to Law No 9/2012, as applicable over the course of the subsequent period up to 14 March 2013 and relevant to the case in the main proceedings, was imposed in accordance with the same calculation method, first, on second-hand motor vehicles imported from other Member States upon their first registration in Romania and, secondly, on motor vehicles already registered in Romania at the time of the first transfer of ownership of those second-hand vehicles in that Member State, in the case where no tax had been paid at the time of their registration in that Member State.

42 It follows that the tax burden resulting from Law No 9/2012, as applicable during the period relevant to the case in the main proceedings, was the same for taxpayers who had bought a second-hand motor vehicle from a Member State other than Romania and had registered that vehicle in Romania as it was for taxpayers who had bought a second-hand motor vehicle in Romania which had been registered there prior to 1 January 2007, without tax having been paid and for which it was necessary to carry out the first transfer of the right of ownership, since that vehicle was, at the time of the levying of the tax introduced by Law No 9/2012, of the same type, characteristics and wear as the vehicle imported from another Member State.

43 It follows from the foregoing considerations that a tax regime such as that in issue in the main proceedings is neutral in terms of competition as between second-hand motor vehicles imported from Member States other than Romania and similar domestic vehicles already registered in the Member State concerned without tax having been paid to that effect.

Neutrality of the tax in respect of competition between second-hand motor vehicles imported from other Member States and similar domestic vehicles already registered in the Member State concerned with payment of tax

44 It is common ground that, during the period material to the case in the main proceedings, Article 4(2) of Law No 9/2012 had the effect of exempting from tax the first transfer of the right of ownership in respect of second-hand domestic vehicles the registration of which in Romania prior to the period relevant in the present case had resulted in the payment of the special tax (registration between 1 January 2007 and 30 June 2008), of the pollution tax pursuant to OUG No 50/2008 (registration between 1 July 2008 and 12 January 2012) or of the pollution tax pursuant to Law No 9/2012, as suspended in part by OUG No 1/2012, (registration between 13 January 2012 and 1 January 2013).

45 It is unambiguously clear from the rulings in preliminary references delivered by the Court in the cases concerning the tax levied on the registration of second-hand motor vehicles in Romania pursuant to OUG No 50/2008 and the tax levied on the registration of second-hand motor vehicles in Romania pursuant to Law No 9/2012, as suspended in part by OUG No 1/2012, that those taxes were incompatible with Article 110 TFEU and must therefore, in principle, be reimbursed with interest (see, inter alia, judgments in *Tatu*, C-402/09, EU:C:2011:219; *Nisipeanu*, C-263/10, EU:C:2011:466; *Irimie*, C-565/11, EU:C:2013:250; order in *Câmpean and Ciocoiu*, C-97/13 and C-214/13, EU:C:2014:229; and judgment in *Nicula*, C-331/13, EU:C:2014:2285). As is apparent from points 2, 3 and 26 of the Opinion of the Advocate General, the special tax levied during the period from 1 January 2007 to 30 June 2008 had characteristics identical to those, incompatible with Article 110 TFEU, of OUG No 50/2008 and Law No 9/2012, as suspended in part by OUG No 1/2012.

46 It thus appears that Article 4(2) of Law No 9/2012 exempted, from the tax imposed by that law, the transfer of the right of ownership of second-hand domestic motor vehicles the registration of which in Romania between 1 January 2007 and 1 January 2013 had given rise to the payment of a tax which is incompatible with EU law and which must, therefore, be reimbursed with interest.

47 In that regard, it must be observed, as the Advocate General states in point 28 of his Opinion, that the exemption from a new tax of those second-hand motor vehicles in respect of which a tax previously in force and subsequently declared incompatible with EU law has already been paid cannot replace the reimbursement, with interest, of that tax.

48 Furthermore, such an exemption had the effect of exempting from the payment of the tax in issue the first transfer, during the period of relevance to the case in the main proceedings, of the right of ownership of second-hand domestic motor vehicles registered in Romania between 1 January 2007 and 1 January 2013, whereas that tax had invariably been levied at the time of registration in Romania, during the same period as the case in the main proceedings, of similar vehicles imported from other Member States. An exemption such as that in issue in the main proceedings thus favours sales of domestic second-hand vehicles and discourages the importation of similar vehicles.

49 In addition, as the Court has repeatedly held, the amount of the tax levied at the time of registration of a motor vehicle is incorporated into the value of that vehicle. In the case where a vehicle is registered following payment of a tax in a Member State and that vehicle is subsequently sold as a second-hand vehicle in that Member State, its market value includes the residual registration tax. If the amount of registration tax levied on an imported second-hand vehicle of the same type, characteristics and wear exceeds that residual tax, there will be a breach of Article 110 TFEU. That difference in the tax burden is liable to favour the sale of domestic second-hand vehicles, thereby discouraging the importation of similar vehicles (judgment in *X*, C-437/12, EU:C:2013:857, paragraphs 30 to 32 and the case-law cited).

50 As the amount of the tax levied at the time of registration of domestic second-hand motor vehicles must, in the present case, be reimbursed with interest in such a way that the situation existing prior to the levying of that amount is restored, that amount must, as the Advocate General observed in point 29 of his Opinion, no longer be considered to be incorporated into the value of those vehicles. Consequently, the residual amount of that tax, incorporated into the value of second-hand domestic vehicles registered between 1 January 2007 and 1 January 2013, is equal to zero and is therefore necessarily lower than the registration tax levied on imported second-hand vehicles of the same type, characteristics and wear. As is apparent from the case-law cited in the preceding paragraph, such a situation is incompatible with Article 110 TFEU.

51 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 110 TFEU must be interpreted as:

— not precluding a Member State from introducing a tax on motor vehicles which is levied on imported second-hand vehicles at the time of their first registration in that Member State and on vehicles already registered in that Member State at the time of the first transfer, within that Member State, of the ownership of those vehicles;

— precluding that Member State from exempting from that tax vehicles already registered and in respect of which a tax previously in force but found to be incompatible with EU law has been paid.

The temporal effects of the judgment of the Court of Justice

52 If the judgment to be delivered should find that a tax regime, such as that established by Law No 9/2012 during the period of relevance in the main proceedings, is incompatible with Article 110 TFEU, the Romanian Government has requested the Court to limit the temporal effects of its judgment.

53 In accordance with settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, gives to a rule of EU law clarifies and, where necessary, defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the delivery of the judgment ruling on the request for interpretation, provided that in other respects the conditions under which an action relating to the application of that rule may be brought before the courts having jurisdiction are satisfied (see, inter alia, judgments in *Blaizot and Others*, 24/86, EU:C:1988:43, paragraph 27; *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraph 50; and *Brzeziński*, C-313/05, EU:C:2007:33, paragraph 55).

54 Consequently, it is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the European Union legal order, be moved to restrict the opportunity to rely on a provision which it has interpreted. Two essential criteria must be fulfilled before such a limitation can be imposed, namely, that those concerned should have acted in good faith, and that there should be a risk of serious difficulties (judgments in *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraph 51, and *Kalinchev*, C-2/09, EU:C:2010:312, paragraph 50).

55 As regards the risk of serious difficulties, it must be recalled that the financial consequences which might ensue for a Member State from a judgment delivered by way of a preliminary ruling do not in themselves justify a limitation on the temporal effects of the ruling (see, inter alia, judgments in *Bidar*, C-209/03, EU:C:2005:169, paragraph 68, and *Brzeziński*, C-313/05, EU:C:2007:33, paragraph 58). It is

for the Member State requesting such a limitation to present, before the Court, figures which establish that there is a risk of serious economic repercussions (judgments in *Brzeziński*, C-313/05, EU:C:2007:33, paragraphs 59 and 60, and *Kalinchev*, C-2/09, EU:C:2010:312, paragraphs 54 and 55).

56 As regards the economic repercussions which might result from an incompatibility with Article 110 TFEU of the tax regime established by Law No 9/2012 during the relevant period, the Romanian Government submitted an estimate indicating that the reimbursement with interest of the sums received pursuant to that law during that period would amount to RON (Romanian lei) 181349488.05. According to the Romanian Government, those economic repercussions must be considered to be serious in the light of Romania's economic difficulties.

57 It must be held that the estimate submitted by the Romanian Government does not in itself allow the conclusion to be drawn that the Romanian economy faces the risk of being adversely affected in a serious manner by the repercussions of the present judgment. The condition relating to the existence of serious difficulties cannot, therefore, be considered to be satisfied.

58 In those circumstances, it is not necessary to determine whether the criterion relating to the good faith of those concerned is satisfied.

59 It follows from those considerations that it is not appropriate to limit the temporal effects of the present judgment.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 110 TFEU must be interpreted as:

— **not precluding a Member State from introducing a tax on motor vehicles which is levied on imported second-hand vehicles at the time of their first registration in that Member State and on vehicles already registered in that Member State at the time of the first transfer, within that Member State, of the ownership of those vehicles;**

— **precluding that Member State from exempting from that tax vehicles already registered and in respect of which a tax previously in force but found to be incompatible with EU law has been paid.**

[Signatures]