



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

22 February 2024*

(Failure of a Member State to fulfil obligations – Article 110 TFEU – Annual circulation tax – Higher taxation of imported second-hand vehicles than of similar vehicles already on the domestic market)

In Case C-694/22,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 10 November 2022,

European Commission, represented by M. Björkland, K. Mifsud-Bonnici and R. Valletta Mallia, acting as Agents,

applicant,

v

Republic of Malta, represented by A. Buhagiar, acting as Agent,

defendant,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, J. Passer and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By its application, the European Commission asks the Court to declare that the Republic of Malta has failed to fulfil its obligations under Article 110 TFEU by levying higher annual circulation tax on motor vehicles registered in other Member States before 1 January 2009 and brought to Malta after that date than on similar vehicles registered in Malta before that date.

Legal context

- 2 Article 2(1) of the Motor Vehicles Registration and Licensing Act, as amended by Act XV of 2016, which appears in Chapter 368 of the Laws of Malta ('the Registration Act'), provides:

'In this Act, unless the context otherwise requires:

...

"circulation licence fee" means the fee paid on the licensing of a motor vehicle and annually thereafter;

...

"registration tax" means the registration tax charged and levied in terms of article 3;

...'

- 3 Article 3(1) of the Registration Act provides:

'There shall be charged and levied by the [transport authority in Malta] on account of the Government a registration tax and a circulation licence fee at the rate or in the amount specified in this Act on the registration and licensing of:

(a) every motor vehicle imported or brought into Malta, and

(b) every motor vehicle manufactured in Malta,

unless the vehicle is the subject of an exemption under this Act or is already registered and licensed in another country and is brought or imported temporarily into Malta, in accordance with the provisions of article 18 ...'

- 4 Article 8 of that act is worded as follows:

'(1) Registration tax on M1, M2 and M3 vehicles shall be due on the registration value of a motor vehicle classified or provisionally classified under the Second Schedule, at the rate or in the amount specified against the respective category and in accordance with the criteria identified under each Schedule:

Provided that in respect of used M1 vehicles classified under the Second Schedule other than those classified under article 6(2) shall not exceed the residual depreciated tax value of an identical or similar motor vehicle on the Maltese market.

(2) Registration tax on N1, N2 and N3 vehicles shall be at the rates or amounts specified in the First Schedule.

(3) In respect of motor vehicles which are brought into Malta having been leased or hired from another Member State which are subject to the payment of a registration tax in terms of article 3(2), the registration tax payable shall be as provided in article 3(3).

(4) M1 motor vehicles with CO₂ emission levels equal to or higher than 221 g/km (and having an emission level equivalent to the latest European Standard or latest European Standard minus one or latest European Standard minus two) and motor cycles with an engine capacity equal to or higher than 801cc which are to be registered for the first time with the [transport authority in Malta] in terms of this Act may be registered to be used on the road in Malta solely and exclusively on Saturdays, Sundays, national holidays and other public holidays.

Registration tax on the said M1 motor vehicles and motor cycles shall be charged at the rate established in the Second Schedule to this Act.

(5) A circulation licence fee shall be due on the licensing of M1 motor vehicles and motor cycles registered in terms of subarticles (3) and (4) at the full rate specified in the Fourth Schedule and every year thereafter.

...'

- 5 The Fourth Schedule of the Registration Act draws a distinction between, on the one hand, vehicles registered in Malta before 1 January 2009, which are subject to a circulation licence fee calculated on the basis of the engine cubic capacity of the vehicle, the propulsion method (diesel or petrol) and the year of manufacture of the vehicle, and, on the other hand, vehicles registered in Malta from 1 January 2009, which are subject to a circulation licence fee calculated on the basis of CO₂ emissions (petrol engines), emissions of CO₂ and particulate matter (diesel engines) and the year of manufacture.

Pre-litigation procedure and proceedings before the Court

- 6 On 7 June 2019, after finding that, by levying a higher annual circulation licence fee ('ACT') on motor vehicles registered in Member States other than the Republic of Malta before 1 January 2009 and brought to Malta after that date than that levied on similar vehicles registered in Malta before that date, the Fourth Schedule of the Registration Act was contrary to Article 110 TFEU, the Commission sent a letter of formal notice to that Member State.
- 7 The Republic of Malta replied by letter of 26 August 2019, in which it stated, first, that the vehicle registration tax regime and the ACT regime were complementary, with the result that the ACT regime could not be examined in isolation from the point of view of its conformity with Article 110 TFEU. Secondly, it noted that the regime introduced by the Fourth Schedule of the Registration Act as regards the ACT levied on vehicles registered in Malta after 1 January 2009 ('the new system') was based on the polluter-pays principle and favoured new, smaller and cleaner vehicles. Thirdly, it indicated that the application of the new system to vehicles registered in Malta before 1 January 2009 would penalise persons who had purchased their vehicle before that date.

Fourthly, it stated that amendments to the Registration Act that would address the discrimination which, according to the Commission, the Fourth Schedule of that act introduces with regard to vehicles imported into Malta from 1 January 2009 were under analysis.

- 8 On 9 June 2021, the Commission issued a reasoned opinion in which it reiterated that, in its view, the ACT regime established by the Fourth Schedule of the Registration Act infringed Article 110 TFEU. It noted that the amendments referred to by the Republic of Malta in its letter of 26 August 2019 had not yet been adopted and that it had not taken them into account in its assessment, but that it had inferred from the fact that those amendments had been proposed that the Republic of Malta recognised the existence of the discrimination at issue. It thus called on the Republic of Malta to comply with the reasoned opinion within two months.
- 9 By a letter of 5 August 2021, the Republic of Malta replied to that reasoned opinion, giving further details of the legislative measures planned in order to address the alleged infringement. Furthermore, that Member State again highlighted the adverse consequences which the migration of the entire car fleet registered in Malta before 1 January 2009 to the new system would entail for the owners of the vehicles concerned. Such a migration would undermine the legitimate expectations of those owners who, in accordance with the system prior to the Fourth Schedule of the Registration Act ('the former system'), at the moment when the vehicles were registered, had paid registration tax with the expectation that no additional tax payments would be levied in the future. In that context, the Republic of Malta asserted that it is necessary to take into consideration the social implications that such a change would have, resulting from the likelihood that vehicles covered by the former system belong to individuals affected by financial insecurity.
- 10 Since the Commission was not persuaded by the Republic of Malta's reply, it decided to bring the present action.

The action

Arguments of the parties

- 11 In support of its action, the Commission raises a single complaint, alleging infringement by the Republic of Malta of Article 110 TFEU, in so far as the regime established by the Fourth Schedule of the Registration Act concerning the determination of the amount of the ACT entails discrimination against second-hand vehicles registered in another Member State before 1 January 2009 and imported into Malta after that date.
- 12 In the first place, the Commission submits that, under that regime, vehicles registered in Malta before 1 January 2009 must be taxed under the former system, by virtue of which the ACT is to be calculated on the basis of the engine capacity of the vehicle, the propulsion type (diesel or petrol) and the year of manufacture. By contrast, vehicles registered in Malta after that date must be taxed under the new system, by virtue of which the ACT is to be calculated on the basis of CO₂ emissions for petrol vehicles, emissions of CO₂ and particulate matter for diesel vehicles and the year of manufacture for both categories of vehicles.

- 13 Since it is not disputed that the ACT applicable under the new system is higher than that applicable under the former system, vehicles registered in Malta before 1 January 2009 are subject to a lower ACT than similar vehicles registered in another Member State and brought to Malta after that date. In that context, the Commission provides some examples which, in its view, illustrate that statement.
- 14 The Commission recalls that Article 110 TFEU requires 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 from other Member States (judgment of 7 July 2011, *Nisipeanu*, C-263/10, EU:C:2011:466, paragraph 25).
- 15 In that context, the Commission refers to the Court's settled case-law, arising in particular from the judgments of 11 December 1990, *Commission v Denmark* (C-47/88, EU:C:1990:449, paragraph 17); of 3 June 2010, *Kalinchev* (C-2/09, EU:C:2010:312, paragraphs 32 and 40); and of 7 April 2011, *Tatu* (C-402/09, EU:C:2011:219, paragraph 55), from which it is apparent that second-hand motor vehicles from other Member States, which are '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 which can, in the event 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 vehicles of the same type, characteristics and wear which are placed on the market in the Member State concerned.
- 16 According to the Commission, the regime introduced by the Fourth Schedule of the Registration Act, in so far as it determines the amount of the ACT, does not take into account the date of initial registration of vehicles where that registration took place in a Member State other than the Republic of Malta before 1 January 2009, resulting in higher taxation of vehicles imported from another Member State than that of vehicles registered in Malta before that date.
- 17 The Commission concludes that, like the Portuguese tax regime concerning the annual road tax levied on motor vehicles registered in Portugal, a regime which was held by the Court to be contrary to Article 110 TFEU in the order of 17 April 2018, *dos Santos* (C-640/17, EU:C:2018:275), the regime introduced by the Fourth Schedule of the Registration Act has the effect of promoting favourable taxation of domestic second-hand motor vehicles and discouraging the transfer from other Member States of similar second-hand motor vehicles, thereby infringing that article.
- 18 In the second place, the Commission disputes the arguments put forward by the Republic of Malta, in the course of the pre-litigation procedure, in order to justify the compliance of the Fourth Schedule of the Registration Act with Article 110 TFEU.
- 19 In that regard, it submits, first, that the Republic of Malta's argument concerning the complementary nature of the registration tax and the ACT is unfounded, since the compatibility of the latter tax with EU law should be assessed independently of any other tax on vehicles. Moreover, even if those two taxes had the same legal basis in Maltese legislation, there would appear to be no correlation between the two taxes in the way they are calculated, since the registration tax is levied only once while the ACT is levied on a yearly basis. Finally, even if the Republic of Malta hypothetically saw fit to tax vehicles registered in Malta before 1 January 2009 under the former system for compensatory reasons, it could easily rectify the discrimination

under the Fourth Schedule of the Registration Act by simply giving imported second-hand vehicles with a registration in another Member State before that date the same financial treatment.

- 20 Secondly, the pursuit of an environmental objective, in the present case, by adopting the polluter-pays principle in the new system, does not absolve a Member State from the obligation to avoid discrimination. Furthermore, as the Court has already held in paragraph 60 of the judgment of 7 April 2011, *Tatu* (C-402/09, EU:C:2011:219), the objective of protection of the environment could be achieved more completely and consistently in the present case by increasing the environmental component of the ACT for all vehicles of a certain age registered before 1 January 2009, including both imported and ‘domestic’ second-hand vehicles.
- 21 Thirdly, the considerations concerning the infringement of the principle of legitimate expectations and the social implications stemming from migrating the national fleet of motor vehicles registered before 1 January 2009 to the new system cannot justify an infringement of the fundamental principle of non-discrimination laid down in Article 110 TFEU, since the Maltese authorities could easily address the concerns it expresses, while complying with Article 110 TFEU, by placing all vehicles registered before that date, either in Malta or in another Member State, under the former system.
- 22 In the third and last place, the Commission asserts that the ongoing process by which the Republic of Malta has made amendments to the Registration Act has no bearing on the present action. First, no amendment has yet been formally adopted by the Republic of Malta. Secondly, it is clear from the Court’s settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, namely, in the present case, 9 August 2021.
- 23 The Republic of Malta contends, in the first place, that no vehicles are manufactured in Malta, so that all vehicles are necessarily imported into that Member State. Thus, in the absence of a local vehicle market, that Member State could never have envisaged adopting any legislation designed to protect such a market. Therefore, any reference to ‘domestic products’, as opposed to ‘imported products’, in the context of the Maltese vehicle market, is absurd and a pure fiction. Therefore, all the Commission’s legal arguments, in so far as they are based on such a fiction, should be rejected.
- 24 Furthermore, the distinction made by the regime introduced by the Fourth Schedule of the Registration Act as regards the determination of the amount of the ACT is based not on the fact that the vehicle concerned was manufactured in Malta or imported from another Member State, in which case there would clearly be an infringement of Article 110 TFEU, but on the date of registration of that vehicle.
- 25 In the second place, the Republic of Malta submits that no vehicle may be used on Maltese roads unless its owner has paid registration tax when it is imported into Malta and registered in that Member State and, thereafter, the ACT. Accordingly, contrary to what the Commission maintains, the registration tax and the ACT should be regarded as one holistic tax regime, and to assess one component independently of the other would inevitably lead to unjust and unfair conclusions.

- 26 In that context, the Republic of Malta submits that the difference in treatment, as regards the determination of the amount of the ACT, which the Fourth Schedule of the Registration Act establishes between vehicles registered in Malta before 1 January 2009, thus under the former system, and those registered after that date, thus under the new system, takes into consideration the fact that the owners of vehicles registered under the former system had to pay a significantly higher registration tax than that which the owners of vehicles registered under the new system are required to pay, since they are instead charged an ACT which varies according to the CO₂ emissions of their vehicles.
- 27 According to the Republic of Malta, the system is thus designed in such a manner as to result in an equitable overall taxation of vehicles and to counterbalance the prejudice which vehicles registered in Malta before 2009 would otherwise suffer as a result of the reduction in registration tax arising from the 2009 amendments. Therefore, according to the Republic of Malta, it must be held that cars registered in Malta before 1 January 2009 and those registered after that date belong to two objectively distinct categories which, due to the overhaul of the tax system, are not comparable and cannot therefore be subject to discriminatory treatment.
- 28 In order to illustrate that argument, the Republic of Malta refers to a table in Annex 1 to its defence, containing a comparison between the seven most registered vehicle models in Malta, from which it is apparent that the levying of a higher ACT on vehicles registered after 1 January 2009 compared with the ACT levied on vehicles registered before that date acted as an equitable measure in order to bring the overall tax burden on owners of vehicles registered before 2009 closer to that borne by owners of vehicles registered after 1 January 2009.
- 29 The levying of a higher ACT on vehicles registered after 1 January 2009 thus does not give rise to any discrimination between vehicles registered before that date and those registered after that date, but, on the contrary, helps to avoid the discrimination and gross injustice which owners of vehicles registered before 1 January 2009 would suffer if the same ACT were to be applied without distinction. The levying of an equivalent level of ACT would not in any way allow the owners of those vehicles to mitigate the higher registration tax they have paid, with the inevitable consequence that the residual value of those vehicles would be significantly reduced compared with that of vehicles registered after that date.
- 30 Finally, the Republic of Malta adds that vehicles registered in another Member State before 1 January 2009 and imported into Malta from that date cannot be equated to vehicles which were registered in Malta before that date, since the former vehicles were subject to a wholly different registration tax regime in their Member State of origin.
- 31 In the third place, the Republic of Malta maintains that the new system aims to protect the environment by embodying the polluter-pays principle in favouring new, smaller and cleaner vehicles. Under the new system, the rate of the ACT increases in proportion to both the age of the vehicle and its total CO₂ emissions. The system thus effectively aims to encourage a shift towards the purchase of less-polluting vehicles as well as more frequent upgrading of vehicles, given that the rate of the ACT is fixed during the first five years following the registration of each vehicle.
- 32 In the fourth place, the Republic of Malta reiterates that migrating the entire fleet of vehicles registered in Malta before 1 January 2009 to the new system would penalise persons who purchased their vehicle before that date, since that migration would result in a significant reduction in the residual value of the vehicles concerned and would place a high tax burden on

their owners at the ACT stage, even though they had already borne a high tax burden at the registration stage. Thus, the transition to the new system would undermine the legitimate expectations of the owners of vehicles registered in Malta under the former system. Furthermore, that migration to the new system would fail to take into account the social implications of the fact that vehicles covered by the former system are, as a general rule, owned by persons in insecure financial circumstances.

- 33 In the fifth and last place, the Republic of Malta submits that the amendments to the Registration Act which would remedy the alleged infringement of Article 110 TFEU were already approved by the Maltese Parliament and were to enter into force on 1 January 2024, stating, however, that those amendments were submitted to the Commission only in a spirit of cooperation and compromise and that they do not in any way imply an admission of the existence of any infringement or discrimination.

Findings of the Court

- 34 In the first place, it must be borne in mind, as is apparent from the Court's settled case-law, that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State at issue found itself at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (judgment of 21 September 2023, *Commission v Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 29 and the case-law cited).
- 35 Thus, in the present case, the approval by the Maltese Parliament, after the expiry of the period prescribed in the reasoned opinion of 9 June 2021, of the amendments to the Registration Act referred to in paragraph 33 of the present judgment has no bearing on the subject matter of the present action or on whether it is well founded.
- 36 In the second place, as the Court has repeatedly held, Article 110 TFEU supplements the provisions on the abolition of customs duties and charges having equivalent effect. The aim of that provision of the FEU Treaty is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminates against products from other Member States (judgment of 3 June 2010, *Kalinchev*, C-2/09, EU:C:2010:312, paragraph 37 and the case-law cited).
- 37 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.
- 38 That provision seeks to guarantee the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (judgment of 7 April 2011, *Tatu*, C-402/09, EU:C:2011:219, paragraph 35 and the case-law cited).
- 39 In that regard, the Court has held that a system of taxation may be considered compatible with Article 110 TFEU only if it is so established and arranged as to exclude any possibility of imported products being taxed more heavily than similar domestic products, so that it cannot, in any event, have discriminatory effect (judgment of 3 June 2010, *Kalinchev*, C-2/09, EU:C:2010:312, paragraph 38 and the case-law cited).

- 40 In that context, the Court has stated that the first paragraph of Article 110 TFEU is infringed where the tax charged on the imported product and that charged on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product (judgment of 3 June 2010, *Kalinchev*, C-2/09, EU:C:2010:312, paragraph 39 and the case-law cited).
- 41 Thus, the total prohibition laid down in Article 110 TFEU applies whenever a fiscal charge is liable to discourage imports of goods originating in other Member States in favour of similar domestic goods (judgment of 19 December 2013, *X*, C-437/12, EU:C:2013:857, paragraph 38).
- 42 First, it is clear from the Court's case-law that taxes on motor vehicles, such as, inter alia, road and registration taxes, constitute internal taxation of the Member States (see, to that effect, judgments of 15 March 2001, *Commission v France*, C-265/99, EU:C:2001:169, paragraph 51, and of 19 December 2013, *X*, C-437/12, EU:C:2013:857, paragraph 20 and the case-law cited).
- 43 Secondly, it is settled case-law that motor vehicles present on the market in a Member State are 'domestic products' of that State within the meaning of Article 110 TFEU. Where those products are placed on the market for second-hand vehicles in that Member State, they must be regarded as 'similar' to imported second-hand vehicles of the same type, characteristics and wear (judgment of 7 July 2011, *Nisipeanu*, C-263/10, EU:C:2011:466, paragraph 24 and the case-law cited).
- 44 Consequently, Article 110 TFEU requires 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 (judgment of 7 April 2011, *Tatu*, C-402/09, EU:C:2011:219, paragraph 56).
- 45 In that context, the Court held, inter alia, that Article 110 TFEU must be interpreted as precluding legislation of a Member State pursuant to which the annual road tax established by that legislation was levied on light passenger motor vehicles registered or listed in that Member State without taking into account the date of first registration of the vehicle where registration took place in another Member State, which resulted in higher taxation of vehicles imported from another Member State compared to similar non-imported vehicles. Accordingly, such legislation has the effect of promoting sales of domestic second-hand vehicles and so discouraging imports of similar second-hand vehicles (see, to that effect, order of 17 April 2018, *dos Santos*, C-640/17, EU:C:2018:275, paragraphs 21 and 22).
- 46 It is therefore necessary to ascertain, in the light of that case-law, whether the regime introduced by the Fourth Schedule of the Registration Act as regards the determination of the amount of the ACT entails the effect described in the preceding paragraph of this judgment, with the result that, as the Commission maintains, it infringes the prohibition of discrimination laid down in Article 110 TFEU.
- 47 In that regard, first, in accordance with the case-law cited in paragraph 43 of the present judgment and contrary to the argument of the Republic of Malta to the effect that there is no Maltese vehicle market, it must be held that vehicles registered in Malta and placed on the market for second-hand vehicles of that Member State must be regarded as being 'similar domestic products', within the meaning of Article 110 TFEU, to imported second-hand vehicles of the same type, characteristics and wear.

- 48 Secondly, as is apparent from Article 3(1) and Article 8(5) of the Registration Act, the ACT applies to motor vehicles imported into or manufactured in Malta and is levied upon registration of such vehicles and every year thereafter.
- 49 Thirdly, it is not disputed that, in the context of the regime introduced by the Fourth Schedule of the Registration Act, a different ACT is levied depending on whether the vehicles concerned were registered in Malta before or after 1 January 2009. In particular, as regards vehicles registered in Malta before that date, the ACT is calculated on the basis of the engine capacity of the vehicle, the propulsion type (diesel or petrol) and the year of manufacture. By contrast, as regards vehicles registered in Malta from that date, the ACT is calculated on the basis of CO₂ emissions (petrol engines), CO₂ and particulate matter emissions (diesel engines) and the year of manufacture for both engine types.
- 50 Fourthly, it is apparent from the parties' written pleadings that, because of those different methods of calculation, the amount of the ACT applicable to vehicles registered in Malta after 1 January 2009 is higher than that applicable to similar vehicles registered in Malta before that date, which is confirmed by the examples submitted to the Court by the Commission, which have not been disputed by the Republic of Malta.
- 51 Thus, the effect of the regime introduced by the Fourth Schedule of the Registration Act as regards the determination of the amount of the ACT is that used vehicles sold in Malta after being registered there before 1 January 2009 are subject to a reduced ACT compared to similar second-hand vehicles registered in a Member State other than the Republic of Malta before that date and brought to Malta after that date.
- 52 Therefore, such a regime burdens second-hand vehicles registered for the first time in a Member State other than the Republic of Malta before 1 January 2009 and imported into the latter Member State after that date with higher taxation than that imposed on similar second-hand domestic vehicles registered in Malta before that date, in so far as it does not take into account the date of registration, in the other Member States, of the imported vehicles. Accordingly, such a regime has the effect of promoting sales of domestic second-hand vehicles and so discouraging imports of similar second-hand vehicles (see, by analogy, order of 17 April 2018, *dos Santos*, C-640/17, EU:C:2018:275, paragraph 21).
- 53 In the third place, the arguments put forward by the Republic of Malta seeking to establish that the compliance of the regime introduced by the Fourth Schedule of the Registration Act with Article 110 TFEU cannot call that finding into question.
- 54 As regards, first, the argument concerning the holistic nature of the registration tax and the ACT, it must be held that, with the exception of the fact that those two taxes have the same legal basis in Maltese legislation, nothing in the evidence produced by the Republic of Malta, in particular in the table in Annex 1 to its defence, referred to in paragraph 28 of the present judgment, makes it possible to establish that those taxes are linked in a way that justifies their being assessed jointly.
- 55 As regards the very nature of those taxes, the registration tax is payable on account of the registration of the vehicle in Malta, whereas the ACT is payable on account of the possession of a vehicle capable of being driven on the public highway. Moreover, as regards the chargeability of those taxes, the registration tax is payable only once, when the vehicle is registered in Malta, whereas the ACT must be paid at the time of registration and then, each year, throughout the lifetime of the vehicle.

- 56 Furthermore, even if the existence of a link between the registration tax and the ACT could be regarded as established, the Republic of Malta would still, in any event, have failed to show that the overall amount of registration tax paid by owners of vehicles registered in Malta before 2009 and of the ACT to be paid over the lifetime of those vehicles corresponds to the overall amount of registration tax paid by owners of similar vehicles registered for the first time in a Member State other than the Republic of Malta before 1 January 2009 and imported into that Member State after that date and the ACT to be paid over the lifetime of those vehicles.
- 57 Secondly, as regards the Republic of Malta's argument that the new system is intended to protect the environment by applying the polluter-pays principle, it suffices to note that that Member State has not established how the introduction of an ACT that affects imported second-hand vehicles more significantly than similar domestic second-hand vehicles is appropriate for securing that objective.
- 58 Furthermore, as the Commission rightly maintained, the pursuit of an objective of environmental protection could be achieved more fully and consistently by increasing the environmental component of the ACT for all vehicles of a certain age, namely second-hand vehicles registered for the first time before 2009, whether in Malta or in another Member State. Such an increase would not favour the domestic second-hand vehicle market over the placing in circulation of imported second-hand vehicles, and would moreover be consistent with the polluter-pays principle (see, to that effect, judgment of 7 July 2011, *Nisipeanu*, C-263/10, EU:C:2011:466, paragraph 28 and the case-law cited).
- 59 Thirdly, as regards the argument relating to the principle of legitimate expectations and social considerations, even if that principle and those considerations constitute a legitimate objective in order to justify the difference in treatment at issue, the Republic of Malta has also failed to establish how the introduction of such a difference in treatment is appropriate for ensuring the protection of that principle and for taking those social considerations into account.
- 60 In that context, it must be held, as the Commission asserts, that, if the Republic of Malta were to take the view that it is necessary to protect any expectations of the owners of the national fleet of motor vehicles registered in Malta prior to 1 January 2009, that could be achieved, without infringing the prohibition of discrimination laid down in Article 110 TFEU, by placing under the former system both those vehicles and vehicles registered in another Member State before that date and imported into Malta after that date.
- 61 Consequently, it must be held that the regime established by the Fourth Schedule of the Registration Act as regards the determination of the amount of the ACT infringes Article 110 TFEU and thus the single complaint raised by the Commission must be upheld.
- 62 It follows from all of the foregoing considerations that the Republic of Malta has failed to fulfil its obligations under Article 110 TFEU by levying a higher annual circulation licence fee on motor vehicles registered in Member States other than the Republic of Malta before 1 January 2009 and brought to Malta after that date than on similar vehicles registered in Malta before that date.

Costs

- 63 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

64 Since the Republic of Malta has been unsuccessful, it must be ordered to bear, in addition to its own costs, those incurred by the Commission, in accordance with the latter's pleadings.

On those grounds, the Court (Seventh Chamber) hereby:

- 1. Declares that the Republic of Malta has failed to fulfil its obligations under Article 110 TFEU by levying a higher annual circulation licence fee on motor vehicles registered in Member States other than the Republic of Malta before 1 January 2009 and brought to Malta after that date than on similar vehicles registered in Malta before that date;**
- 2. Orders the Republic of Malta to bear its own costs and to pay those incurred by the European Commission.**

Biltgen

Passer

Arastey Sahún

Delivered in open court in Luxembourg on 22 February 2024.

A. Calot Escobar
Registrar

F. Biltgen
President of the Chamber