JUDGMENT OF THE COURT (First Chamber)

7 April 2011 *

In Case C-402/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunalul Sibiu (Romania), made by decision of 18 June 2009, received at the Court on 16 October 2009, in the proceedings

Ioan Tatu

v

Statul român prin Ministerul Finanțelor și Economiei,

Direcția Generală a Finanțelor Publice Sibiu,

Administrația Finanțelor Publice Sibiu,

* Language of the case: Romanian.

Administrația Fondului pentru Mediu,

Ministerul Mediului,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, M. Ilešič (Rapporteur), E. Levits and M. Safjan, Judges,

Advocate General: E. Sharpston,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 28 October 2010,

after considering the observations submitted on behalf of:

— Mr Tatu, by D. Târşia, avocat,

— the Romanian Government, by A. Popescu and E. Gane, acting as Agents, and V. Angelescu, adviser,

— the Czech Government, by M. Smolek and K. Havlíčková, acting as Agents,

— the European Commission, by D. Triantafyllou and L. Bouyon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 90 EC.

2 The reference has been made in proceedings between Mr Tatu and Statul român prin Ministerul Finanțelor și Economiei (Romanian State, represented by the Ministry for Financial and Economic Affairs), Direcția Generală a Finanțelor Publice Sibiu (Directorate General of Public Finances, Sibiu), Administrația Finanțelor Publice Sibiu (Office of Public Finances, Sibiu), Administrația Fondului pentru Mediu (Environment Fund Office) and Ministerul Mediului (Ministry for the Environment), concerning a tax which Mr Tatu had to pay on the registration of a motor vehicle from another Member State.

Legal context

European Union legislation

3 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 have become progressively stricter, with the aim of improving air quality in the European Union.

4 The 'Euro 2' standard was introduced with effect from 1 January 1996. The Community legislature then brought in new standards. In accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1), the limit currently in force is the 'Euro 5' standard, and a 'Euro 6' standard is to be applied from 2014.

5 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, which are '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).

National legislation

6 Article 3 of Government Emergency Order No 50/2008 introducing a pollution tax for motor vehicles (Ordonanță de urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule) of 21 April 2008 (*Monitorul Oficial al României*, *Partea I*, No 327, 25 April 2008; 'OUG No 50/2008'), which entered into force on 1 July 2008, introduces a pollution tax on motor vehicles in categories M1 to M3 and N1 to N3.

7 According to the preamble to OUG No 50/2008, that tax forms part of measures aimed at 'the improvement of air quality and implementation of the limit values laid down by the [European Union] legislation in this area' and is introduced in such a way as to 'ensure adherence to the applicable standards of European [Union] law, including the case-law of the Court of Justice of the European [Union]'.

8 Article 1 of OUG No 50/2008 provides:

'1. The present emergency order establishes the legal framework for the introduction of a pollution tax on motor vehicles ("the tax"), the revenues from which shall be assigned to the budget of the Environment Fund and be managed by the Environment Fund Office for the purposes of funding programmes and projects for the protection of the environment.

2. The sums collected under this emergency order shall be used to finance programmes and projects for the protection of the environment, as follows:

(a) the programme for stimulating the renewal of the national stock of motor vehicles;

(b) the national programme for the improvement of the quality of the environment through the creation of green spaces in built-up areas;

(c) projects for the replacement or improvement of traditional heating systems by systems using solar energy, geo-thermal energy and wind energy;

(d) projects for the production of energy from renewable sources …

…'

9 Under Article 4(a) of OUG No 50/2008, liability to pay the tax arises 'on the first registration in Romania of a motor vehicle'. Article 5(1) and (2) of the order provide that 'the tax shall be calculated by the competent tax authority' and that 'for the purpose of establishing the tax, a natural or legal person … intending to register a motor vehicle shall file the documents containing the elements of calculation of the tax laid down in the implementing regulations for this emergency order'.

10 Article 5(3) of OUG No 50/2008 states that 'the amount of the tax in lei shall be determined on the basis of the exchange rate established on the first working day of October of the previous year and published in the *Official Journal of the European Union*'. The first exchange rate applicable was thus that published in the *Official Journal of the European Union* of 2 October 2007 (OJ 2007 C 230, p. 2), according to which EUR 1 was equivalent to RON 3.3565.

11 Article 6 of OUG No 50/2008 provides:

'1. The amount payable as tax … shall be calculated as follows:

…

(b) for motor vehicles in category M1 of no Euro pollution standard or pollution standard Euro 1 or Euro 2, in accordance with the following formula:

Amount payable = C x D x (100 – E)/100

where:

C = engine size (cylinder capacity);

D = the specific tax on engine size specified in column 3 of Annex 2;

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

…

3. The fixed percentage reduction specified in Annex 4 shall be established by reference to the age of the vehicle, its annual average kilometrage, its technical condition and the level of its equipment. On calculation of the tax, additional reductions of the fixed percentage reduction shall be granted by reference to the variation from the standard of the factors on the basis of which the fixed percentage was assessed, in accordance with the conditions laid down in the regulations implementing the present emergency order.

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

…'

12 In accordance with Article 10 of OUG No 50/2008:

'1. The amount of the tax may be challenged if a person who is to register a second-hand motor vehicle can demonstrate that the value of his vehicle has depreciated to a greater extent than that shown by 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(3).

3. In the event of a challenge, the characteristics of the second-hand motor vehicle referred to in paragraph 2 shall be determined, on request by the taxpayer, by a technical inspection performed in return for a fee by Registrul Auto Român (Romanian Automobile Register) on the basis of the procedure laid down by the regulations implementing the present emergency order.

4. The fee for the technical report shall be fixed by Registrul Auto Român according to the operations in connection with the inspection and must not exceed their cost.

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

6. The document relating to the result of the technical inspection drawn up by Registrul Auto Român shall be submitted by the taxpayer to the competent tax authorities.

7. On receipt of the document referred to in paragraph 6, the competent tax authority shall recalculate the amount to be paid by way of the tax, which may lead to reimbursement of the difference from the tax paid on registration.

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

…'

13 Annex 4 to OUG No 50/2008 reads as follows:

Scale of percentage reductions of the tax

Age of the vehicle	Percentage reduction (%)
1	2
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 — 15 years inclusive	93
Over 15 years	95

14 The methodological rules for the implementation of OUG No 50/2008 were adopted on 24 June 2008 (Normele metodologice de aplicare a Ordonanței de urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule, *Monitorul Oficial al României*, *Partea I*, No 480, 30 June 2008; 'the Implementing Regulations').

15 Under Article 3(5) and (6) of the Implementing Regulations:

'5. The tax shall be paid by taxpayers in lei, by transfer or in cash, at the departments of the State Treasury of the tax office at which they are registered as taxpayers or have their residence for tax purposes, to the account … "Available from pollution taxes on motor vehicles" …

6. On the last working day of the month, the departments of the State Treasury shall transfer to the account … "Available from the Environment Fund", opened in the name of Environment Fund Office at the State Treasury, the amounts collected …'

16 Article 4 of the Implementing Regulations, which is in Chapter IV of the regulations, entitled 'Calculation of the tax', states in paragraphs 4 and 5:

'4. The factors on the basis of which the percentage reductions of the tax payable on a motor vehicle regarded as "standard" laid down in Annex 4 to [OUG No 50/2008] have been determined are as follows:

(a) age calculated as the difference between the date on which the calculation is made and the date of first registration ;

(b) annual average kilometrage:

— M1 — 15 000 km

— N1 — 30 000 km

— M2 and N2 — 60 000 km

— M3 and N3 — 100 000 km

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

(d) equipment: air-conditioning, ABS and airbag.

5. For second-hand motor vehicles on first registration in Romania, the date of first registration used in calculating the tax shall be the date recorded in the corresponding section of the foreign registration document.'

17 Article 5 of the Implementing Regulations, which is in Chapter V of the regulations, entitled 'Determination of the real depreciation of a second-hand motor vehicle', states:

'1. The amount of the tax payable, calculated in accordance with the provisions of Article 6 of [OUG No 50/2008], may be adjusted if the person seeking to register a second-hand vehicle declares on his honour that the actual annual average kilometrage of the vehicle in question is greater than the annual average kilometrage regarded as standard for the category of motor vehicles concerned, laid down in Article 4(4)(b).

2. In the case referred to in paragraph 1, the amount of the tax shall be calculated on the basis of the percentage reduction laid down in Annex 4 to [OUG No 50/2008] increased by the additional reduction laid down in Annex 1 …

3. The annual average kilometrage shall be calculated by relating the kiolmetrage shown on the vehicle's indicator to the age …

…

6. The amount of the tax payable … may also be adjusted if the person seeking to register a second-hand vehicle demonstrates, on the basis of a technical inspection performed by Registrul Auto Român, that the depreciation of a second-hand vehicle's value exceeds that indicated in the fixed scale in Annex 4 to [OUG No 50/2008].

…'

18 Annex 1 to the Implementing Regulations contains the following table:

Scale of additional percentage reductions according to the actual annual average kilometrage of the motor vehicle

Category of motor vehicle	Difference between actual annual average kilometrage and standard annual average kilometrage (km))	Additional percentage reduction (%)
M1	<5 000	0
	5 001 – 10 000	1.0
	10 001 – 15 000	1.5
	15 001 – 20 000	2.0
	20 001 – 25 000	2.5
	25 001 – 30 000	3.0
	>30 001	3.5

Category of motor vehicle	Difference between actual annual average kilometrage and standard annual average kilometrage (km))	Additional percentage reduction (%)
N1	<10 000 10 001 – 20 000 20 001 – 30 000 30 001 – 40 000 40 001 – 50 000 >50 0001	0 1.0 1.5 2.0 2.5 3.0
M2 and N2	<15 000 15 001 – 30 000 30 001 – 45 000 45 001 – 60 000 60 001 – 75 000 >75 001	0 1.0 1.5 2.0 2.5 3.0
M3 and N3	<25 000 25 001 – 50 000 50 001 – 100 000 100 001 – 150 000 150 001 – 200 000 >200 001	0 1.0 1.5 2.0 2.5 3.0

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

19 In July 2008 Mr Tatu, a Romanian national residing in his Member State of origin, purchased a second-hand motor vehicle in Germany. The vehicle was a category M1 vehicle with a cylinder capacity of 2 155 cm3, complying as regards emissions with the Euro 2 emissions standard. It was manufactured in 1997 and registered in Germany in that year.

20 Mr Tatu wished to register the vehicle in Romania. For that purpose he had to pay RON 7 595 as pollution tax under OUG No 50/2008, in accordance with a decision of 27 October 2008 of the Administrația Finanțelor Publice Sibiu.

21 By application instituting proceedings filed with the Tribunalul Sibiu (Sibiu Regional Court) on 17 December 2008, Mr Tatu sought for the defendants to be ordered to repay him that amount. In support of his claim, he submitted that the tax in question was incompatible with European Union law, in particular in that it was charged on second-hand vehicles imported into Romania from other Member States and registered for the first time in Romania, whereas with similar vehicles already registered in Romania the tax was not charged on their resale as second-hand vehicles. Imported second-hand vehicles were therefore taxed more heavily than similar vehicles already registered in Romania, which directed Romanian consumers towards purchasing the latter.

22 The extent of the discrimination was illustrated by the circumstances of the dispute in the main proceedings, since the second-hand motor vehicle in question had been bought in Germany for EUR 6 600 and subjected on registration in Romania to tax of RON 7 595, the equivalent of more than EUR 2 200. The amount of tax paid thus considerably exceeded the residual amount of tax included in the value of a similar vehicle already registered in Romania.

23 Mr Tatu also submitted that the objective of OUG No 50/2008, namely protection of the environment, could have been achieved by more appropriate measures, such as the introduction of a pollution tax on all motor vehicles in circulation, not merely on those registered from 1 July 2008.

24 The Tribunalul Sibiu confirms that the tax introduced by OUG No 50/2008 is charged only on motor vehicles registered for the first time in Romania from 1 July 2008, the date on which that order entered into force, and not on vehicles which were already in circulation on Romanian territory before that date.

25 It also sets out the subsequent amendments to OUG No 50/2008, the first of which, introduced by Government Emergency Order No 208/2008 laying down certain measures concerning the pollution tax on motor vehicles (Ordonanță de urgență a Guvernului nr. 208/2008 pentru stabilirea unor măsuri privind taxa pe poluare pentru autovehicule) of 4 December 2008 (*Monitorul Oficial al României*, *Partea I*, No 825, 8 December 2008; 'OUG No 208/2008'), took effect from 15 December 2008.

26 In those circumstances, the Tribunalul Sibiu decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Are the provisions of OUG No 50/2008, as subsequently amended, contrary to the provisions of Article 90 EC, and do they in fact constitute a measure which is manifestly discriminatory?'

Consideration of the question referred

27 It should be recalled that, while any question relating to European Union law enjoys a presumption of relevance, the Court nevertheless cannot give an answer where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts or purpose of the main proceedings (see, to that effect, inter alia, Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36; and Case C-225/09 *Jakubowska and Others* [2010] ECR I-12329, paragraph 28).

28 In the present case, the case-file shows that the national legislation applicable to the dispute in the main proceedings is OUG No 50/2008 in its original version, as the pollution tax was levied on the motor vehicle at issue in those proceedings on 27 October 2008. According to the order for reference, OUG No 50/2008 entered into force on 1 July 2008, and the amendments to that order made by OUG No 208/2008 took effect only from 15 December 2008.

29 In order to give an answer which will be of use to the referring court, its question should therefore be understood as seeking to know whether Article 90 EC precludes a system of taxation such as that introduced by the original version of OUG No 50/2008.

30 In the light of that clarification and of the objective of the tax laid down by OUG No 50/2008, the referring court is essentially asking whether Article 110 TFEU, whose wording is identical to that of Article 90 EC, must be interpreted as precluding a Member State from introducing a pollution tax charged on motor vehicles on their first registration in that Member State.

31 Mr Tatu submits, by an argument corresponding to that put forward before the referring court, summarised in paragraphs 21 to 23 above, that a tax such as that at issue in the main proceedings is incompatible with Article 110 TFEU. The Czech Government shares that view. The Romanian Government and the European Commission take the contrary position.

32 As the Advocate General observes in point 20 et seq. of her Opinion, a tax levied by a Member State on the registration of motor vehicles in its territory for the purpose of being placed in circulation is neither a customs duty nor a charge having equivalent effect to a customs duty within the meaning of Articles 28 TFEU and 30 TFEU. Such a tax is an internal tax and must therefore be examined in the light of Article 110

TFEU (see, inter alia, Case C-383/01 *De Danske Bilimportører* [2003] ECR I-6065, paragraph 34, and Joined Cases C-290/05 and C-333/05 *Nádasdi and Németh* [2006] ECR I-10115, paragraphs 38 to 41).

33 Moreover, since the scope of Article 34 TFEU does not extend to the internal taxes referred to in Article 110 TFEU, a tax on registration such as that at issue in the main proceedings cannot be assessed from the point of view of the rules on quantitative restrictions on imports and charges having equivalent effect to such restrictions (see, to that effect, Case C-383/01 *De Danske Bilimportører*, paragraph 32, and Case C-313/05 *Brzeziński* [2007] ECR I-513, paragraph 50).

34 The fact remains that the aim of Article 110 TFEU is to ensure free movement of goods between the 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 that discriminates against products from other Member States (see, inter alia, Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraph 9; *Brzeziński*, paragraph 27; and Case C-2/09 *Kalinchev* [2010] ECR I-4939, paragraph 37).

35 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 provision of the Treaty seeks to guarantee the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (Case C-47/88 *Commission* v *Denmark*, paragraphs 8 and 9, and Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 66).

36 In the main proceedings, it is common ground that, formally, the system of taxation introduced by OUG No 50/2008 does not distinguish between motor vehicles according to their origin or between the owners of those vehicles according to their nationality. The tax at issue 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.

37 However, even if the conditions for direct discrimination are not met, internal taxation may be indirectly discriminatory as a result of its effects (*Nádasdi and Németh*, paragraph 47).

38 To ascertain whether a tax such as that at issue in the main proceedings creates indirect discrimination between imported second-hand motor vehicles and similar second-hand motor vehicles which are already on national territory, it must first be examined, in the light of the referring court's questions and the observations submitted to the Court, 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 laid down by OUG No 50/2008. It will then be necessary to examine the neutrality of the tax between imported second-hand vehicles and similar second-hand vehicles which were registered on national territory before the entry into force of OUG No 50/2008.

Neutrality of the tax as regards imported second-hand vehicles and similar second-hand vehicles previously registered on national territory and subjected on registration to that tax

39 According to settled case-law, there is a breach of Article 110 TFEU 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 (Case C-345/93 *Nunes Tadeu* [1995] ECR I-479, paragraph 20; Case C-393/98 *Gomes Valente* [2001] ECR I-1327, paragraph 23; and Case C-101/00 *Tulliasiamies and Siilin* [2002] ECR I-7487, paragraph 55).

40 The Court has stated that, when a tax on registration is paid in a Member State, the amount of that tax is incorporated in the value of the vehicle. Thus, if a vehicle registered in the Member State in question is subsequently sold as a second-hand vehicle in that Member State, its market value, including the residual registration tax, will be equal to a percentage of its original value, determined by depreciation (*Nádasdi and Németh*, paragraph 54). Therefore, to ensure the neutrality of the tax, the value of the imported second-hand vehicle taken as the basis of taxation must reflect the value of a similar vehicle already registered on national territory (*Weigel*, paragraph 71, and Case C-74/06 *Commission* v *Greece* [2007] ECR I-7585, paragraph 28).

41 To obtain that result, the actual depreciation of imported second-hand vehicles must be taken into account in calculating the amount of tax. That taking into account need not necessarily involve an assessment or inspection of every vehicle. A Member State may, avoiding the inherent burden of such a system, 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, propulsion method, make or model, a value for second-hand vehicles which, as a general rule, would be very close to their actual value (*Gomes Valente*, paragraph 24; *Weigel*, paragraph 73; and *Commission* v *Greece*, paragraph 29).

42 Those objective criteria for assessing the depreciation of motor vehicles have not been listed by the Court as being obligatory (*Commission* v *Greece*, paragraph 37). 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 reflects the actual depreciation of those vehicles (see, to that effect, *Gomes Valente*, paragraphs 28 and 29, and *Commission* v *Greece*, paragraphs 38 to 42). In particular, where kilometrage is not taken into account, the scale adopted by the legislation at issue does not, as a general rule, lead to a reasonable approximation of the actual value of imported second-hand vehicles (*Commission* v *Greece*, paragraph 43).

43 In the case at issue in the main proceedings, it is clear from the documents submitted to the Court that the amount of the tax is determined, first, according to parameters reflecting to a certain extent the pollution caused by the vehicle, such as its cylinder capacity and the Euro standard to which it corresponds, and, second, by taking its depreciation 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 OUG No 50/2008) but also, as follows from Article 6(3) of OUG No 50/2008 and Articles 4 and 5 of the Implementing Regulations, to the actual annual average kilometrage of the vehicle, provided that the taxpayer has declared that kilometrage. Moreover, if the taxpayer considers that the age and the actual annual average kilometrage do not correctly and sufficiently reflect the actual depreciation in the value of the vehicle, he may, under Article 10 of OUG No 50/2008, request that the depreciation be determined by means of an inspection, the cost of which, to be borne by the taxpayer, must not exceed the cost of the operations in connection with the inspection.

44 By introducing into the calculation of the tax the vehicle's age and actual annual average kilometrage, and by adding to the use of those criteria the option of taking into account, at not 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 is reduced in accordance with a reasonable approximation of the actual value of the vehicle.

45 That conclusion is borne out by the fact that, in the fixed scales in Annex 4 to OUG No 50/2008, due account is taken of the circumstance that the annual depreciation in value of motor vehicles is generally more than 5 % and is not linear, particularly in the first years, in which it is much greater than subsequently (see *Commission* v *Greece*, paragraph 30 and the case-law cited).

46 Moreover, the Romanian Government 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 the vehicle by an expert, and that, 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.

47 It follows from the above considerations that a system such as that established by OUG No 50/2008 which takes account, in calculating the tax on registration, of the depreciation of the motor vehicle by using fixed, detailed and statistically based scales relating to the age and actual annual average kilometrage of the vehicle, which may, at the request and at the expense of the taxpayer, be supplemented by an inspection of the general condition of the vehicle and its equipment, ensures that when that tax is charged on imported second-hand vehicles it 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 on that registration to the tax laid down by OUG No 50/2008.

Neutrality of the tax between imported second-hand vehicles and similar second-hand vehicles registered on national territory before the introduction of the tax

48 Mr Tatu observes that placing a second-hand vehicle purchased in another Member State in circulation in Romania involves paying a pollution tax, in his case a tax of RON 7 595 for a vehicle with a cylinder capacity of 2 155 cm3, of Euro 2 standard and built in 1997, whereas the purchase on the Romanian second-hand vehicle market of a vehicle registered in Romania before the entry into force of OUG No 50/2008 of precisely the same age and technical characteristics as that imported vehicle is, in principle, financially much more advantageous, since no tax of the same magnitude as that due under OUG No 50/2008 is payable or incorporated in the value of the vehicle bought on the Romanian market.

49 The Romanian Government submits that Article 110 TFEU does not affect the fiscal autonomy of the Member States and that the attractiveness of the Romanian second-hand vehicle market compared to the market in imported second-hand vehicles, put forward by Mr Tatu, is due to the fact that OUG No 50/2008 does not apply to vehicles registered in Romania before its entry into force. The government cites paragraph 49 of *Nádasdi and Németh*, in which the Court ruled essentially that Article 110 TFEU may not be relied on to claim that a tax is discriminatory merely because it is levied on vehicles registered after the entry into force of the law concerning the tax and not on those registered before its entry into force.

50 It must be recalled that, as the Court stated in paragraph 49 of *Nádasdi and Németh*, Article 110 TFEU is not intended to prevent a Member State from introducing new taxes or from changing the rate or basis of assessment of existing taxes.

51 Moreover, if a Member State introduces a new tax law, it obviously determines that it is to apply from a certain date. The tax applied after the entry into force of that law may therefore differ from the rate of tax previously in force. As the Court held in paragraph 49 of *Nádasdi and Németh*, relied on by the Romanian Government, that circumstance cannot in itself be regarded as discriminating between earlier situations and those subsequent to the entry into force of the new legislation.

52 It does not follow, on the other hand, from *Nádasdi and Németh* that the Member States' powers to make new tax arrangements are unlimited. On the contrary, it is settled case-law that the prohibition laid down in Article 110 TFEU must apply whenever a fiscal charge is liable to discourage imports of goods originating in other Member States in favour of domestic goods (see, to that effect, Case 252/86 *Bergandi* [1988] ECR 1343, paragraph 25; Case C-45/94 *Ayuntamiento de Ceuta* [1995] ECR I-4385, paragraph 29; and C-221/06 *Stadtgemeinde Frohnleiten and Gemeindebetriebe Frohnleiten* [2007] ECR I-9643, paragraph 40).

53 Article 110 TFEU would be deprived of meaning and purpose if it were open to the Member States to introduce new taxes which had the purpose or effect of discouraging the sale of imported products in favour of the sale of similar products available on the domestic market which had been placed on that market before those taxes entered into force. Such a situation would allow the Member States, by introducing internal taxes designed in such a way as to have the above effect, to circumvent the prohibitions in Articles 28 TFEU, 30 TFEU and 34 TFEU.

54 In the case of taxes on motor vehicles, the absence of harmonisation in this field means that each Member State can arrange its tax measures in accordance with its own assessments. Such assessments and the measures adopted to implement them must, however, be free of the effect described in the preceding paragraph (see, to that

effect, Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 40; Case C-464/02 *Commission* v *Denmark* [2005] ECR I-7929, paragraph 74; and Case C-98/05 *De Danske Bilimportører* [2006] ECR I-4945, paragraph 28).

55 It must be recalled here 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. Second-hand vehicles purchased on the market of that Member State and those purchased in other Member States in order to be imported and placed in circulation in the former State are competing products (see, inter alia, Case C-47/88 *Commission* v *Denmark*, paragraph 17, and *Kalinchev*, paragraphs 32 and 40).

56 It follows from the above principles 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.

57 In the main proceedings, despite the uncontested existence of statistics showing a very considerable fall in registrations of imported vehicles in Romania since the entry into force of OUG No 50/2008, the Romanian Government stated to the Court that the primary objective of that legislation is protection of the environment.

58 However, it is clear from the documents before the Court that the 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. It cannot be disputed that, in those circumstances, OUG No 50/2008 has the effect of discouraging the import and placing in circulation in Romania of second-hand vehicles purchased in other Member States.

59 It must be stated, in the light of the principles noted in paragraphs 50 to 53 above, that, while the Member States retain extensive powers in tax matters which allow them to adopt a great variety of measures, they must nevertheless comply with the prohibition laid down by Article 110 TFEU.

60 Moreover, it is clear, as Mr Tatu rightly observes, that the objective of protection of the environment put forward by the Romanian Government, taking the form of preventing, by the application of a deterrent tax, the use in Romania of particularly polluting vehicles, such as those corresponding to standards Euro 1 and Euro 2 with a large cylinder capacity, and using the revenue from that tax to finance environmental projects, could be achieved more completely and consistently by imposing the pollution tax on all vehicles of that kind in circulation in Romania. Such a tax, whose implementation in connection with an annual road tax is entirely conceivable, 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.

61 In the light of all the foregoing, the answer to the question is that Article 110 TFEU must be interpreted as precluding 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.

Costs

62 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 (First Chamber) hereby rules:

Article 110 TFEU must be interpreted as precluding 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.

[Signatures]