Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

9 June 2016*

(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 — Fiscal neutrality as between second-hand motor vehicles imported from other Member States and similar motor vehicles available on the domestic market)

In Case C-586/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), made by decision of 24 November 2014, received at the Court on 18 December 2014, in the proceedings

Vasile Budișan

v

Administrația Județeană a Finanțelor Publice Cluj,

THE COURT (Ninth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász and K. Jürimäe (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Romanian Government, by R.-H. Radu, D. Bulancea and R. Mangu, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and by A. De Stefano, avvocato dello Stato,

— the European Commission, by M. Wasmeier and G.-D. Balan, acting as Agents,

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

gives the following

* Language of the case: Romanian.

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 Vasile Budișan and the Administrația Județeană a Finanțelor Publice Cluj (Departmental Administration for Public Finances, Cluj, Romania) concerning a tax which Mr Budișan was required to pay in order to register in Romania a second-hand motor vehicle imported from another Member State.

Romanian law

3 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) had 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 a motor vehicle in Romania ('the special tax').

4 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'), which came into force from 1 July 2008, had imposed a pollution tax on vehicles in categories M1 to M3 and N1 to N3 (the 'pollution tax'). That tax amount was payable in particular at the time of the first registration of a motor vehicle in Romania.

5 OUG No 50/2008 was amended several times, before being repealed by Law No 9/2012 concerning a tax on pollutant emissions from motor vehicles (Legea nr. 9/2012 privind taxa pentru emisiili poluante provenite de la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

6 Pursuant to Article 4 of Law No 9/2012, the tax on pollutant emissions was payable not only upon the first registration of a motor vehicle in Romania, but also, under certain conditions, upon the first registered transfer in Romania of ownership of a second-hand motor vehicle.

7 However, as a result of Government Emergency Order No 1/2012 relating to the suspension of the application of certain provisions of Law No 9/2012 concerning a tax on pollutant emissions and to the repayment of the tax pursuant to Article 4(2) of that law (Ordonanța 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 în conformitate cu prevederile art. 4 alin. 2 din lege) of 30 January 2012 (*Monitorul Oficial al României*, Part I, No 79 of 31 January 2012), which entered into force on 31 January 2012, the application of the tax on pollutant emissions from motor vehicles at the time of the first registered transfer, in Romania, of ownership of a second-hand motor vehicle was suspended until 1 January 2013.

8 Government Emergency Order No 9/2013 concerning the environmental stamp duty in respect of motor vehicles (Ordonanța de urgență nr. 9/2013 privind timbrul de mediu pentru autovehicule) of 19 February 2013 (*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.

9 In accordance with Article 4 of OUG No 9/2013:

'[Environmental] stamp duty [in respect of motor vehicles] shall be payable only once, as below:

(a) upon the registration with the competent authority of the acquisition of ownership of a vehicle, by its first owner in Romania and upon the issue of a registration certificate and registration number;

(b) upon the return of a motor vehicle to the national stock of motor vehicles, where, at the time of its removal from the national stock, the residual amount of the [environmental] stamp duty [in respect of motor vehicles] was returned to the owner …;

(c) upon the registered transfer of ownership of a second-hand motor vehicle in respect of which payment has not been made, in accordance with the legislation in force at the time of the vehicle's registration, of the special tax for passenger cars and motor vehicles, or the [pollution tax] or the tax on pollutant emissions from motor vehicles;

(d) upon the registered transfer of ownership of a second-hand vehicle in respect of which a court has ordered a tax refund or has permitted its registration without payment of the special tax for passenger cars and motor vehicles, or the [pollution tax] or the tax on pollutant emissions from motor vehicles.'

10 Article 7(2) of OUG No 9/2013 provides:

'The residual value of the [environmental] stamp duty [in respect of motor vehicles] is the amount which would have to be paid for a vehicle if it were registered at the time when it ceases to be part of the national stock of motor vehicles, calculated on the basis of the legislation under which the amount of tax to be paid upon registration was established, calculated in [Romanian Lei (RON)] at the exchange rate applicable on registration of a second-hand car or on registered transfer of the right of ownership of a second-hand car, account being taken of the age of the vehicle when it ceases to be part of the national stock.'

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

11 On 5 June 2013, Mr Budişan purchased a second-hand motor vehicle, manufactured in 2006 and registered initially in Germany.

12 In order to register that vehicle in Romania, Mr Budişan had to pay the Romanian authorities the amount of RON 5 300 (approximately EUR 1 193) as environmental stamp duty in respect of motor vehicles ('environmental stamp duty'), as provided for by OUG No 9/2013.

13 Taking the view that OUG No 9/2013 is incompatible with Article 110 TFEU, Mr Budişan brought an action before the Tribunalul Cluj (Regional Court, Cluj) requesting that the Departmental Administration for Public Finances, Cluj, be ordered to repay the sum received as environmental stamp duty.

14 By judgment of 3 April 2014, the Tribunalul Cluj (Regional Court, Cluj) dismissed that action. In the view of that court, OUG No 9/2013 was compatible with EU law, as it did not discriminate against imported products vis-à-vis domestic products, be they new or second-hand. The applicant in the main proceedings then appealed to the referring court.

15 The Curtea de Apel Cluj (Court of Appeal, Cluj) considers that the issue of compatibility with Article 110 TFEU of the environmental stamp duty introduced by OUG No 9/2013 presents itself in two ways. First, that court asks whether the fact that OUG No 9/2013 provides that the vehicles, in

respect of which registration in Romania had already resulted in the payment of the special tax, the pollution tax or the tax on polluting emissions are exempt from the environmental stamp, is compatible with Article 110 TFEU, since the residual amount of one of the previous taxes included in the value of those vehicles is less than the amount of the environmental stamp duty. Since that exemption had the effect, consequently, when those vehicles were sold, of making the prices of those vehicles lower than those of vehicles from a Member State in respect of which the new tax is due, the sale of second-hand domestic vehicles would be advantaged to the detriment of the importation of similar vehicles from other Member States.

16 Second, the referring court questions the compatibility with Article 110 TFEU of the detailed rules for levying the environmental stamp duty. The owners of a vehicle which is on the national market and in respect of which no tax has been paid, either because that vehicle was registered before 1 January 2007 or because its owner was repaid the amount of the tax paid previously, could, pursuant to OUG No 9/2013, use that vehicle without paying the environmental stamp duty until the sale of the vehicle, that is to say up to a future uncertain event, while the owner of a similar vehicle imported from another Member State could use that vehicle only for 90 days before having to register it and, hence, paying that environmental stamp duty.

17 In those circumstances, the Curtea de Apel Cluj (Court of Appeal, Cluj) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) In the light of [OUG No 9/2013] and the purpose of the [environmental stamp duty], must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions, applicable upon the registration of motor vehicles coming from another Member State of the European Union, where that tax does not apply to the registration of domestic motor vehicles, upon the transfer of ownership of such vehicles, in respect of which such a tax or a similar tax has already been paid, where the amount of such a residual tax incorporated into the value of the motor vehicles on the domestic market is lower than the new tax?

(2) In the light of [OUG No 9/2013] and the purpose of the [environmental stamp duty], must Article 110 TFEU be interpreted as precluding a Member State of the European Union from establishing a tax on pollutant emissions, applicable upon the registration of motor vehicles from another Member State of the European Union, but which, in the case of domestic motor vehicles, is payable only upon the transfer of ownership of such vehicles, the result being that a foreign vehicle cannot be used unless the tax is paid, but a domestic vehicle can be used for an unlimited time without the tax being paid, until the ownership of that vehicle is transferred, if ever, followed by its registration in the name of the new owner?’

Consideration of the questions referred for a preliminary ruling

18 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, second, from exempting from that tax motor vehicles already registered in respect of which a tax previously in force has been paid and which has not been repaid, when the residual amount of that tax, included in the value of those vehicles, is less than the amount of the new tax.

19 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 which discriminates against products from other Member States (judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 28 and the case-law cited).

20 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.

21 In the present case and in respect of the sale of second-hand vehicles only, which is the subject of those questions, it is clear from the order for reference that OUG No 9/2013 establishes a tax, namely the environmental stamp duty, levied, first, on imported second-hand vehicles at the time of their first registration in Romania and, second, 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.

22 Furthermore, Article 4(c) of OUG No 9/2013 exempts from that environmental stamp duty the transfer of ownership of second-hand domestic vehicles the registration of which in Romania has already given rise to the payment of the special tax, the pollution tax or the tax on polluting emissions, with the exception of the cases referred to in Article 4(d) thereof, where a court has ordered the repayment of the tax concerned.

23 In order to determine whether a tax regime, such as that put in place by OUG No 9/2013, gives rise to discrimination contrary to the first paragraph of Article 110 TFEU, it is necessary to examine, first, the effect which that tax has on competition between second-hand motor vehicles imported from Member States other than Romania and the domestic vehicles which are subject to that tax. Second, it is necessary to examine the neutrality of that regime with regard to the competition between that first set of vehicles and similar domestic vehicles which benefit from the exemption described in the previous paragraph.

24 In that 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 vehicles of the same type, characteristics and wear which are placed on the market in that Member State (judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 31 and the case-law cited).

25 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. By reason of the fact that they have not been offered for sale, those vehicles are not in competition with other vehicles, be they those available on the domestic market or those available on the market of other Member States (judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 32).

Concerning the fiscal neutrality of the environmental stamp duty in terms of competition between second-hand motor vehicles imported from other Member States and the similar Romanian vehicles already registered in that Member State and which do not benefit from the exemption under OUG No 9/2013

26 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 the national territory, it is necessary to have regard not only to the rate of tax concerned, namely the

environmental stamp duty, but also to the basis of assessment and the detailed rules for levying the tax in question (judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 33 and the case-law cited).

27 Moreover, 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 (judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 34 and the case-law cited).

28 Taking this into account need not necessarily involve an assessment or inspection of every vehicle. To avoid 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 (see judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 35 and the case-law cited).

29 In the present case, it is apparent from the documents before the Court and, in particular, from the observations submitted by the Romanian Government, the truth of which the national court must verify, that the amount of environmental stamp duty is established pursuant to a scale containing objective and transparent criteria, such as the cylinder capacity, the Euro pollution standard or the CO_2 emissions of the vehicle concerned, and the age and mileage of the vehicle. Moreover, if the taxpayer takes the view that that scale does not reflect the actual depreciation in the value of the vehicle, he can 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.

30 Subject to verification by the referring court, it is therefore apparent that OUG No 9/2013 ensures that the environmental stamp duty is reduced in accordance with a reasonable approximation of the actual value of the vehicle (see, by analogy, judgment of 7 April 2011 in *Tatu*, C-402/09, EU:C:2011:219, paragraph 44, and 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 38).

31 Furthermore, unlike the special tax, the pollution tax and the tax on polluting emissions in the version in force during the period from 13 January 2012 to 1 January 2013, the environmental stamp duty is levied, according to the same calculation method, first, on second-hand motor vehicles from other Member States upon their first registration in Romania and, second, on motor vehicles already registered in Romania at the time of the first transfer, within that Member State, of the ownership of those second-hand vehicles which do not benefit from the exemption described in paragraph 22 above.

32 Consequently, and still subject to verification by the referring court, the tax burden resulting from OUG No 9/2013 is 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 already registered in that Member State, without tax having been paid and for which it was necessary to carry out the first transfer of the right of ownership without benefitting from the exemption referred to in paragraph 22 above, since that vehicle was, at the time of the levying of the environmental stamp duty, of the same type, characteristics and wear as the vehicle imported from another Member State.

33 It follows from the foregoing considerations that a tax regime such as that put in place by OUG No 9/2013 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 and which are not exempt from the tax put in place by that order.

Concerning the neutrality of environmental stamp duty in terms of competition between second-hand motor vehicles from other Member States and the similar Romanian vehicles already registered in that Member State and which benefit from the exemption under OUG No 9/2013

34 As was stated in paragraph 22 above, Article 4(c) of OUG No 9/2013 exempts from payment of that environmental stamp duty the transfer of ownership of second-hand domestic vehicles the registration of which in Romania has already given rise to the payment of the special tax, the pollution tax or the tax on polluting emissions, with the exception of the cases referred to in Article 4(d) thereof, where a Romanian court has ordered, for a given vehicle, the repayment of the tax concerned.

35 In that regard, it is unambiguously clear from the Court's case-law in the cases concerning the pollution tax levied pursuant to OUG No 50/2008 and the tax on polluting emissions levied pursuant to Law No 9/2012, as suspended in part by Government Emergency Order No 1/2012 (registration of motor vehicles for the period from 13 January 2012 to 1 January 2013), that those taxes were incompatible with Article 110 TFEU (judgments of 7 April 2011 in *Tatu*, C-402/09, EU:C:2011:219; 7 July 2011 in *Nisipeanu*, C-263/10, not published, EU:C:2011:466; and order of 3 February 2014 in *Câmpean and Ciocoiu*, C-97/13 and C-214/13, not published, EU:C:2014:229).

36 Similarly, the special tax must be regarded as incompatible with Article 110 TFEU, since it presented identical characteristics to those of OUG No 50/2008, which are incompatible with that article (see, to that effect, judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 45). The tax on polluting emissions levied pursuant to Law No 9/2012, in the version applicable from 1 January 2013 to 15 March 2013, is also incompatible with Article 110 TFEU due to its detailed rules for levying that tax and due to the fact, inter alia, of having been levied only on second-hand domestic vehicles for which no taxes on the registration of vehicles previously in force in Romania had been paid (see, to that effect, judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraphs 47 to 50).

37 The Court has already held that a tax regime under which second-hand vehicles which were subject to such taxes which are incompatible with EU law will be exempt from a fresh tax — in the present case, the environmental stamp duty — is incompatible with Article 110 TFEU (see, to that effect, judgment in 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 47 to 51).

38 According to the Court's settled case-law, 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 amount of that tax. If the amount of tax levied, on the date of registration, on an imported second-hand vehicle of the same type, characteristics and wear exceeds that residual tax amount, there will be a breach of Article 110 TFEU (judgment of 19 December 2013 in *X*, C-437/12, EU:C:2013:857, paragraphs 30 and 31 and the case-law cited).

39 However, a tax which is incompatible with EU law, such as those mentioned in paragraph 35 above, must be repaid with interest (see, to that effect, judgments of 18 April 2013 in *Irimie*, C-565/11, EU:C:2013:250, paragraphs 20 and 21, and 15 October 2014 in *Nicula*, C-331/13, EU:C:2014:2285, paragraphs 27 and 28) and its amount must therefore no longer be considered as being incorporated into the market value of the vehicles on which that tax is levied. Since the residual amount of the tax in the value of those vehicles is equal to zero, that amount is thus necessarily lower than the new tax, in this case the environmental stamp duty, levied on imported second-hand vehicles of the same type, characteristics and wear (see, to that effect, judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 50).

40 It is true, in the case in the main proceedings, that Article 4(d) of OUG No 9/2013 contemplates the situation in which, for a given vehicle, the registration tax levied on it was in fact repaid and provides that in the present case the transfer of the right of ownership of the vehicle concerned gives rise to payment of the environmental stamp duty.

41 However, it must be held that the residual amount of a tax which is incompatible with EU law ceases to be incorporated in the market value of a vehicle if the owner of that vehicle has, pursuant to that law, the possibility of obtaining repayment of the tax, regardless of whether or not it was in fact repaid on the date of sale of that vehicle.

42 This mere possibility is likely to encourage owners of the second-hand Romanian vehicles concerned to propose, in respect of those vehicles, even if the relevant tax has not been paid, a price which does not take that tax into account. If the tax has not yet been repaid, the buyers of such vehicles will, pursuant to Article 4(c) of OUG No 9/2013, be exempt from environmental stamp duty. However, the second-hand vehicles imported from another Member State will invariably be subject to environmental stamp duty pursuant to OUG No 9/2013 at the time of the registration, in Romania, of the ownership of those vehicles. Thus, an exemption such as that resulting from that provision is liable to confer a competitive advantage on second-hand vehicles already present on the Romanian market and therefore to discourage the importation of similar vehicles from other Member States.

43 In the light of all of the foregoing, 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 and not repaid.

The temporal effects of the judgment of the Court of Justice

44 If the judgment to be delivered should find that OUG No 9/2013 is incompatible with Article 110 TFEU, the Romanian Government has requested the Court to limit the temporal effects of its judgment. That Government argues that this decision could create serious difficulties for the Romanian economy.

45 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 date 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 judgments of 2 February 1988 in *Blaizot and Others*, 24/86, EU:C:1988:43, paragraph 27; 10 January 2006 in *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraph 50; and of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 53).

46 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 of 10 January 2006 in *Skov and Bilka*, C-402/03, EU:C:2006:6, paragraph 51, and of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 54).

47 In addition, such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought (judgment of 6 March 2007 in *Meilicke and Others*, C-292/04, EU:C:2007:132, paragraph 36 and the case-law cited).

48 In the case in the main proceedings, as regards the economic repercussions which might result from an incompatibility with Article 110 TFEU of the tax regime established by OUG No 9/2013, the Romanian Government submitted an estimate indicating that the reimbursement with interest of the sums received in taxes on vehicle registration would be RON 6504429857.47 (approximately EUR 1 448 341 039). The restitution of such sums would result in a 0.9% increase in the budget deficit of the Romanian State forecast for 2015, which would increase from 1.83% to 2.7% of the Romanian State's GDP.

49 It should be noted that the observations of the Romanian Government are ambiguous on the question whether that estimate relates to the repayment of solely the amounts levied as environmental stamp duty pursuant to OUG No 9/2013 or to those received by the Romanian State for all registration taxes, that is to say, also the special tax, the pollution tax and the tax on polluting emissions.

50 The Court has implicitly or explicitly refused to limit the temporal effects both in judgments in which such taxes were declared incompatible with EU law (with regard to the pollution tax laid down by OUG No 50/2008, see judgments of 7 April 2011 in *Tatu*, C-402/09, EU:C:2011:219, and of 7 July 2011 in *Nisipeanu*, C-263/10, not published, EU:C:2011:466 paragraphs 34 to 38; with regard to the tax on polluting emissions levied pursuant to Law No 9/2012, in its various versions, see order of 3 February 2014 in *Câmpean and Ciocoiu*, C-97/13 and C-214/13, not published, EU:C:2014:229, paragraphs 37 to 42, and judgment of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraphs 56 to 59) and in those judgments in which it is indicated that such taxes should have been repaid with interest (see judgments of 18 April 2013 in *Irimie*, C-565/11, EU:C:2013:250, and of 15 October 2014 in *Nicula*, C-331/13, EU:C:2014:2285, paragraphs 40 to 42).

51 In that context, the fact that the Romanian State delayed the repayment of amounts levied in respect of the special tax, the pollution tax and the tax on polluting emissions cannot justify a limitation on the temporal effects of the present judgment.

52 The condition relating to the existence of serious difficulties cannot, therefore, be considered to be satisfied. Consequently, it is not necessary to determine whether the criterion relating to the good faith of those concerned is satisfied.

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

Costs

54 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 (Ninth 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 and not repaid.**

[Signatures]