



Press and Information

Court of Justice of the European Union
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Judgment in Case C-169/20
Commission v Portugal (Vehicle tax)

The rules for calculating the registration tax on second-hand vehicles imported into Portugal infringe the principle of the free movement of goods

National legislation does not ensure that imported second-hand vehicles are subject to a tax the amount of which is equal to that of the tax charged on similar second-hand vehicles already present on the Portuguese market

By a 2016 judgment,¹ the Court of Justice declared that Portugal had failed to fulfil its obligations under Article 110 TFEU, the purpose of which is to ensure the 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. The Court held that, in determining the amount of the vehicle tax, the system for calculating the depreciation of the vehicles, which was applied in order to determine the taxable value of second-hand vehicles imported into Portugal from another Member State, did not take account of the depreciation of those vehicles during their first year of use or of depreciation of more than 52% in the case of vehicles which have been used for more than five years.

According to the Portuguese code covering vehicle tax, tax rates are determined by taking into account the engine capacity and an environmental component (calculated based on the level of carbon dioxide emissions). Portugal claims to have complied with the 2016 judgment by amending the code in order to increase the number of bands which are used to calculate the depreciation of second-hand vehicles imported into its territory. However, unlike the previous version of the code, the reduction rates based on the age of the vehicle now apply to only the vehicle's engine capacity, with the environmental component being payable in full.

The Commission requests that the Court declare that, by excluding, in the calculation of the tax at issue, the depreciation of that component when determining the applicable value of second-hand vehicles put into circulation in the Portuguese territory and purchased in another Member State, Portugal has failed to fulfil its obligations under Article 110 TFEU. According to the Commission, the result of the rules and method for calculating the tax is that a second-hand vehicle imported from another Member State is almost always taxed more heavily as compared with a similar second-hand vehicle registered in Portugal, which leads to discrimination as between the two categories of vehicle.

In the judgment delivered today, **the Court declares that Portugal has failed to fulfil its obligations.**

The Court points out that the registration tax paid in a Member State is incorporated into the value of the vehicle. In the case where the vehicle is subsequently sold as a second-hand vehicle in that Member State, **its market value, including the residual amount of the registration tax, will be equal to a percentage of its original value, determined according to the depreciation of that vehicle.**

The Court finds that, under the reformed taxation system in Portugal, unlike the component calculated based on the engine capacity of the vehicle concerned, in respect of which a

¹ Judgment of the Court of 16 June 2016, *Commission v Portugal*, [C-200/15](#).

percentage reduction based on the age of the vehicle is provided for, **no reduction of the environmental component is provided for to reflect the depreciation of the market value of the vehicle in that regard.** Consequently, **the amount of registration tax for second-hand vehicles imported into Portugal from other Member States is calculated without taking into account the actual depreciation of those vehicles.** Therefore, **the national legislation does not ensure that second-hand vehicles imported from another Member State are subject to a tax the amount of which is equal to that of the tax charged on similar second-hand vehicles that are already present on the national market, which is contrary to Article 110 TFEU.**

Portugal claims that that situation is justified by the objective of environmental protection. It argues that the full payment of the environmental component has the aim of subjecting the admission of second-hand vehicles into Portugal to a selective criterion by applying exclusively environmental criteria, in compliance with, inter alia, the 'polluter pays' principle.

The Court points out in that regard that, **although the Member States are free to determine the rules for calculating the registration tax in a way that takes into account considerations linked to environmental protection, any form of discrimination, direct or indirect, against imports from other Member States or any form of protection of competing domestic products must be avoided.** It adds that the objective of environmental protection could be achieved more completely and consistently by imposing an annual tax on all vehicles put into circulation in a Member State, which would not favour the domestic second-hand vehicle market over the putting into circulation of imported second-hand vehicles, and would moreover be consistent with the polluter-pays principle.

The Court notes that **a tax calculated based on the polluting potential of a second-hand vehicle which, like the tax at issue, is levied only at the time of import and putting into circulation of a second-hand vehicle from another Member State,** whereas the purchaser of such a vehicle that is already present on the market of the Member State concerned must pay only the amount of residual tax incorporated in the market value of the vehicle bought by him or her, **is contrary to Article 110 TFEU.**

The Court also rejects Portugal's submission that the environmental component of the tax at issue is, in fact, an autonomous tax, separate from the component of that tax which is calculated based on the engine capacity of the vehicle concerned; this is because it is presented as one of the two elements used to calculate a single tax and not as a separate tax. Additionally, that tax would, in any event, still be discriminatory.

Lastly, the Court highlights that, although taxpayers may opt for another method of calculating the tax at issue by requesting the director of customs to recalculate that tax on the basis of an actual estimate of the value of the vehicle concerned, **the existence of an alternative method of calculating tax does not relieve a Member State of the obligation to comply with the fundamental principles of a basic rule in the Treaty on the Functioning of the European Union, nor does it authorise that Member State to infringe that Treaty.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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

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