CRITICAL OVERVIEW ON THE ROMANIAN REGULATIONS REGARDING CAR TAXES

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Résumé : *En Roumanie, on a récemment adopté quelques réglementations par lesquelles – en instituant des impôts/des taxes sur les auto (provenant d'autres Etats) pour la première immatriculation dans notre pays – on a violé les prévoyances expresses du Traité de l'Union Européenne qui interdisent toute discrimination (avantage ou restriction/ embarras) en ce qui concerne la libre circulation des marchandises dans l'espace communautaire. Il s'agit des dispositions de l'art. 214¹ – 214³ du Code fiscal[1] concernant la taxe spéciale pour les automobiles et auto véhicules[2], enlevées ultérieurement (en 2008) et remplacées par celles introduites par l'Ordonnance d'Urgence du Gouvernement no 50/2008 concernant l'institution de la taxe de pollution (toutes ces prévoyances légales étant évoquées et invoquées sous la dénomination générique de "taxes auto").*

A la suite de la mise en application de ces dispositions légales, la Commission Européenne a attentionné, notifié et puis menacé le Gouvernement de la Roumanie avec le déclenchement de la "procédure d'infrigement" au cas où l'on n'enlèvera pas - dans un délai raisonnable – la discrimination instituée par la loi roumaine.

Mécontentes par l'introduction dans le paysage fiscal roumain d'un nouvel impôt (assez accablant) et encouragées – en même temps – par la prise de position de la Commission Européenne envers notre pays à cette raison, de nombreuses personnes physiques et juridiques ont attaqué en instance – par différentes formes, par différentes causes juridiques – la prétention et la perception des impôts /des taxes auto, en sollicitant et en obtenant la restitution des sommes acquittées pour l'immatriculation des auto véhicules acquises sur le territoire des autres Etats communautaires, en invoquant – principalement – la violation par l'Etat roumain des réglementations communautaires primaires (spécialement, l'article no 90 du Traité de l'Union Européenne).

Les instances judiciaires de Roumanie – tenant compte des dispositions de l'art. 148, al. 2 de la Constitution revue (qui statuent que les prévoyances des traités constitutifs de l'Union Européenne ont la priorité par rapport aux dispositions contraires des lois internes) et des prévoyances de l'art. 90 du Traité de l'Union Européenne – ont apprécié que les taxes légales par lesquelles ont a institué les impôts / les taxes auto ne peuvent pas être appliquées car elles contreviennent aux normes communautaires et, par conséquence, elles ont admis les demandes par lesquels elles ont été saisies et ont disposé la restitution du budget de l'Etat des sommes encaissées de manière illégale. Pour

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[1] Les dispositions légales respectives ont été introduites à l'occasion de la modification du Code fiscal par la Loi no 343/2006 et, respectivement, par OUG no 110/2006 et sont entrées en vigueur le 1er janvier 2007.

[2] L'introduction de cette taxe a été justifiée – conformément aux dispositions publiques exprimées par le Ministère des Finances Publiques et le Ministère de l'Environnement – la nécessité d'assurer la protection de l'environnement (une solution dans ce sens étant représentée par la restriction – par imposition de la taxe – de l'importation d'auto véhicules second-hand polluantes des autres Etats membres de l'Union Européenne).

la prononciation de telles décisions on a tenu compte aussi de la jurisprudence de la Cour de Justice Européenne d'où se dégage – sans équivoque - la conclusion que toute violation des réglementations communautaires – accomplie par les Etats membres de l'Union Européenne – doit être et elle est sanctionnée (voir les causes contre la France – 1984 et 1999, contre la Grèce – 1988 et 1995, le Danemark – 1988, le Portugal – 1993, la Pologne – 2005 et la Hongrie – 2006).

De plus, essayant une réparation partielle de la situation de non légalité constatée, on a créé un état de grave confusion juridique lorsqu'on a remplacé les dispositions de l'art. 214¹ - 214³ C. fisc. (par lesquelles on a institué la taxe de première immatriculation) par celles de l'OUG no 50/2008 (par lesquelles on a introduit la taxe de pollution), parce que:

- l'acte normatif par lequel on a modifié le Code fiscal – respectivement l'OUG no 50/2008 – a un caractère évident non légal (rapporté au droit interne), car, conformément à la disposition de l'art. 4 C. fisc., "toute modification ou complètement du Code ne se réalise que par la loi", or l'Ordonnance d'Urgence par laquelle on a abrogé les prévoyances du Code fiscal concernant la taxe de première immatriculation, n'étant pas approuvée par la loi, contient des prévoyances qui ne peuvent pas être mises en application (étant illégales) et, par conséquence, les actes émis conformément à cette ordonnance ne peuvent pas produire les effets juridiques d'un acte administratif (dans le sens du Code de procédure fiscale);

- le remplacement d'un impôt indirect (accise) par une taxe parafiscale n'est pas, par elle-même de nature à enlever la "discrimination" créée par la protection de la production interne d'auto véhicules; - la taxe de pollution – telle quelle a été pensée et calculée - n'a pas, au fond, le rôle d'assurer la protection de l'environnement, car les sommes prétendues pour l'immatriculation d'un auto véhicule (pour la première fois, en Roumanie) sont plus grandes au cas d'auto véhicules moins polluantes (les nouvelles, à moteurs de génération Euro 4 et Euro 5) et – inversement – moindres pour les anciennes (qui, n'étant pas équipées de moteurs performants du point de vue écologique, polluent l'environnement à un degré élevé);

- la prévoyance conformément à laquelle vont être compensées les sommes à restituer du budget (encaissées en vertu des prévoyances – abrogées – du Code fiscal) avec celles dues conformément aux prévoyances de l'OUG no 50/2008 est tout à fait aberrante, pour les raisons suivantes: les taxes prétendues en vertu du Code fiscal – pour les auto véhicules second-hand – ont été encaissées d'une manière non légale, à cause de l'état d'incompatibilité existent entre le droit national et le droit communautaire (par conséquence, ces sommes doivent être purement et simplement restituées, elles ne pouvant pas faire l'objet d'aucune compensation); une éventuelle compensation serait possible, théoriquement, seulement si les taxes auraient été perçues en vertu de certains actes juridiques contemporains (car, autrement, l'application rétroactive des dispositions de l'ordonnance d'urgence contreviendrait aux principes constitutionnels de la non rétroactivité de la loi) ou de certains actes normatifs instituant le même genre d'impôt (or, dans la situation discutée, il s'agit de remplacer une accise – impôt indirect, dû au budget d'Etat par une taxe parafiscale – qui est collectée, comme revenu extrabudgétaire dans le Fond pour l'environnement).

Considérant ces "données du problème", nous apprécions qu'il s'impose d'éliminer les dispositions légales nationales par lesquelles on crée des situations discriminatoires qui contreviennent aux normes communautaires. Le droit communautaire, comme système autonome de droit, doit être appliqué uniformément dans tout l'espace de l'Union Européenne, et pour cela, il doit être intégré dans le système de droit interne des Etats membres, c'est-à-dire faire effectivement partie du droit national de chaque Etat communautaire et, donc, s'appliquer directement.

Keywords: *special tax for cars, excise duty, Code on Taxation, discriminatory, quasi-fiscal charge.*
JEL Classification: K 34

1. When Romania officially became a member with full rights of the European Union, and also with obligations derived from its new status as "Community country", all public authorities should have already become familiar with both Community regulations (which, starting with the date of accession, became part of the "legal order" according to the revised Constitution[3]), and with the settled case-law of the European Court of Justice (ECJ). Unfortunately, it did not take long until it became clear that we were not well prepared to take part into the "Community dance". That's why our country has already been warned and even threatened by the European Commission following its failure to meet several Community rules, one of them being its failure to observe the provisions forbidding any form of discrimination or restriction / obstacle on free movement of goods within the Community area.

2. Consequently, one of the amendments implemented in 2006 in the Romanian Code on Taxation refers to the introduction of certain provisions based on which a new form of indirect taxation was established: the special tax for automobiles and motor vehicles[4], coming into force on January 1, 2007. Since July 1, 2008, the already mentioned provisions of the Code on Taxation have been repealed and replaced with those of the Emergency Ordinance no. 50/2008 of the Government on establishing the pollution tax for cars[5]. All these legal provisions have been evoked and invoked – both in theory and in practice – under the general name of „car taxes".

Before starting the critical overview of such legal regulations, some explanations are required.

As far as *the legal character* is concerned, the special tax for automobiles and motor vehicles is *an excise duty*, while the new legal provisions are included in Title VII of the Code on Taxation, under the name of „Excise duties". Furthermore, additional arguments come to support the quality of this tax as an excise duty: until January 1, 2007, excise duties for the introduction in Romania of automobiles were regulated within the meaning of Articles 207-208 of the Code on Taxation (provisions included in the same Title VII); the authentic special taxes are regulated by Article 282 of the Code on Taxation (included in Title VIII) and are always related to a local public service[6]. As far as *the taxable object* is concerned, it was and still is a matter of motor vehicles (originating in other member states of the EU) which are to be registered for the first time in Romania. Within the meaning of the mentioned regulations, any natural or legal person wishing to register for the first time an automobile or a motor vehicle of the type provided by the Code on Taxation would gain, as a rule, the status of *taxpayer* and would pay the excise duty regulated by Article 214^1-214^3 of the Code on Taxation, of the size stipulated by such legal provisions. *The generating element of the excise duty*, that is the event generating the obligation to pay that excise duty to the state budget, is the first registration of that automobile / motor vehicle in Romania[7]. As a matter of fact, the tax used to be paid upon the first registration in Romania (the registration depended on the submission of the payment document), whereas the excise duty thus collected was to contribute to the state budget.

The pollution tax introduced instead the excise duty (tax for the first registration) is a *quasi-fiscal charge*, materialized in a sum of money which – all natural and legal persons who register for

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[3] According to the Romanian Constitution (revised in 2003), the provisions of the founding treaties of the EU have priority as opposed to the contrary provisions included in the internal regulations [Article 148 (2)].

[4] Within the meaning of Law no. 343/2006, the Code on Taxation was supplemented with Articles 214^1-214^3, in relation to a new form of indirect taxation: the special tax for automobiles and motor vehicles. According to the public positions exhibited by the Ministry of Environment Protection and the Ministry of Public Finances, the introduction of the tax was required in order to ensure environment protection and to prevent the import of second-hand polluting automobiles and motor vehicles from other member states of the EU.

[5] The Emergency Ordinance no. 50/2008 of the Government on establishing the pollution tax for motor vehicles was published in the MO no. 327 (the official gazette of Romania, in which all the promulgated bills, presidential decrees, governmental ordinances and other major legal acts are published) of April 25, 2008 and was amended by Emergency Ordinance no. 218/2008 (published in the MO no. 836 of December 11, 2008) and by Emergency Ordinance no. 7/2009 (published in the MO no. 103 of February 19, 2009).

[6] In order to present the differences existing between duties and taxes, as well as the legal regime peculiar to each category, see M. St. Minea, C. F. Costas, THE LAW OF PUBLIC FINANCES, vol. II – Fiscal law, Publishing House. „Wolters Kluwer Romania", Bucharest, 2008, pages 51-66.

[7] To this sense, it is worth mentioning that the Methodological norms provide additional explanations for two cases: a) for such automobiles and 4X4 vehicles which are registered for the first time in Romania after January 1, 2007 and for which the necessary excise duties were paid when imported or acquired from the internal market, no special tax is to be paid for the year 2006; b) for such automobiles brought into Romania under leasing contracts entered into before January 1, 2007 and finalized after this date, the owner shall pay to the state budget the excise duties in force on the date the leasing contract was entered into, in no case the special tax.

the first time a (foreign or Romanian) motor vehicle in Romania have to pay it – is to be collected as an extra-budgetary income in the Environment Fund[8].

3. The establishment of the tax for the first registration in case of the second-hand automobiles which were registered for the first time in Romania gave birth to a significant legal problem, as the collection of that tax seriously violated the norms of Community law. As shown in theory[9], this was generated by the fact that Article 90 of the EC Treaty stipulates: „ No Member State shall impose, directly or indirectly, on the products of other member states any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other member states any internal taxation of such a nature as to afford indirect protection of domestic products".

At the same time, according to the settled case-law of the ECJ, such taxes existing in the Romanian Code on Taxation are discriminatory measures towards second-hand products originating in other member states of the EU, prohibited by Article 90 (1) of the EC Treaty. The Court of Justice was many times involved in such matters concerning the qualification of such car registration taxes or such duties imposed on transportation means as being prohibit fiscal measures according to Article 90 of the EC Treaty.

For instance, the case *Humblot* brought to discussion the French car taxation system (1984). According to this system, the cars with maximum 16 CP were taxed according to a progressive system, the maximum annual rate of the tax being 1.100 FRF. For the cars which exceeded 16 CP, the tax was one and the same, 5000 FRF/year. Consequently, the tax imposed on a car with 17 CP was four times and a half higher than that imposed on a car with 15 CP. Mr. Humblot claimed in front of the Court that this system was discriminatory and he added that it was understandable why France only manufactured 16 CP cars, having as a result the fact that only foreign cars (usually originating in Germany) were taxed with 5.000 FRF/year. As expected, the Court realized that the French taxation system was discriminatory and protectionist, discouraging the acquisition of foreign cars and violating Article 90 of the EC Treaty (Case C-112/84, Michel Humblot vs. Directeur des services fiscaux). Another French case was resolved by the ECJ. France established other protectionist fiscal measures in the field, according to which the owners of imported cars which were equipped with "innovating technologies" (such as automatic 5-speed gear box or manual 6-speed gear box) were also fined. These measured were also abolished by the ECJ as being contrary to Article 90 (Case C-265/99, the Commission vs. France).

Greece was a "loyal client" of the ECJ in two cases, with different results: a) In the first case, the Commission claimed that the Greek taxation system, which taxed new cars according to three categories (moderate cylinder capacity – up to 1600 cm^3; average cylinder capacity – between 1601 and 1800 cm^3; high cylinder capacity – over 1800 cm^3), aimed at protecting its domestic production, as the tax for the third category was significantly higher. And still, the Court decided that the Greek taxation system was not incompatible with Article 90 because: just because only foreign cars come under the third category does not mean that the system is discriminatory, whereas member states are entitled to tax more strictly luxury products, on the grounds of social policies; all the cars coming under the 2^{nd} category were imported, so the Commission could not test its thesis concerning the preferential acquisition of Greek cars (Case C-132/88, the Commission vs. Greece). More recently, the Commission questioned more successfully the taxes imposed on second-hand cars. For such cars, the calculation basis of the tax was reduced by 5% for each year which passed since the production date, until it reached a maximum of 20%. As expected, the Court claimed that the value of a car would not decrease linearly and that the depreciation of the car would not stop when it reaches 20% of the acquisition price. Consequently, the taxation system had in view a discriminatory overestimation of imported second-hand cars, as

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[8] The Environment Fund was established in Romania according to Law no. 73/2000 and is now functioning within the meaning of the provisions of the Emergency Ordinance no. 196/2005 of the Government, amended several times.

[9] C. F. Costaş, *Remark on the decision taken by the European Court of Justice in the combined cases Nadasdi and Nemeth*, in the Fiscal Paper no. 10/2006, pages 29-34; C. F. Costaş, *Remark on the decision taken by the European Court of Justice in the case Brzezinski*, The Romanian Magazine on Business Law (R.R.D.A.) no. 1/2007, pages 131-143; C. F. Costaş, *Car Registration Tax – The First Romanian ECJ Case?*, in European Taxation no. 3/2007, IBFD Publishers, Amsterdam, pages 151-152; D. C. Ungur, *The special tax paid on the first car registration in Romania and its incompatibility with Community law*, in R.R.D.C. no. 2/2007, pages 51-56; L. Zigmund, *The direct effect of Community law. Implications on the special car tax*, in R.R.D.A. no. 1/2007, pages 66-73.

the tax imposed on such cars exceeded the residual value of the tax included in the acquisition price of a car already registered in Greece. The Court rejected the explanation of the Greek Government on the necessity to preserve the taxation system with a view to environment protection: even though such an initiative is to be appreciated, it cannot be implemented through discriminatory measures affecting exclusively imported, older and more polluting cars (Case C-375/95, the Commission vs. Greece).

In an older case, the Danish second-hand car taxation system was also declared incompatible with Article 90 (1), as fiscal authorities estimated the taxation basis for such cars to 90% of the initial acquisition price. It was obviously a discriminatory measure, favoring the trade with second-hand cars already existing on the national market, whose price included solely the residual value of the registration tax (Case C-47/88, the Commission vs. Denmark).

In another case, *Nunes Tadeu*, which regarded a measure identical to the Danish one, the Court also determined that the registration tax of second-hand cars from Portugal was incompatible with Article 90 of the EC Treaty (Case C-345/93, Fazenda Publica and Ministerio Publico vs. Americo Joao Nunes Tadeu).

In 2006, the ECJ announced its decision in the combined cases *Nádasdi and Németh*, stating that the Hungarian registration tax imposed on imported second-hand cars is incompatible with Article 90 (1) of the EC Treaty, because: a) A new car for which the registration tax was paid in Hungary loses in time a part of its market value. Consequently, as the car depreciates, the rate of the registration tax included in the residual value of the car is reduced. The result is that the second-hand car in question can only be sold at a price which represents only a part of its initial price, which includes the residual value of the registration tax. On the contrary, for a similar second-hand car originating in another member state, the owner shall pay in Hungary the entire value of the registration tax. b) The above mentioned taxation system brings about an illicit discrimination within the meaning of Article 90 (1) between imported second-hand cars and similar second-hand cars which are already registered in Hungary. c) The necessity to protect the environment cannot justify the discriminatory nature of the tax. d) The Court claimed that „the value of the sum to be repaid is not large enough so that the repayment should have considerable economic consequences to the extent that it should justify a limitation of the temporal effects of this decision" (pgh. 68). Consequently, the Hungarian Government was invited to pay back the money illegally cashed in the period May 1, 2004-December 31, 2005 and to support the administrative costs implied by this operation.

In *Brzeziński* case, the ECJ had to deal with the Polish taxation system of second-hand cars. More precisely, Poland had established since the date it became a member state of the EU (May 1, 2004) a taxation system which discouraged the massive import of second-hand cars originating in other member states (especially Germany). According to national rules, the excise duties were distinctly imposed: a) for new or two-year old cars, the owner had to pay a fixed rate of 3,1% or 13,6% (depending on the cylinder capacity) of the acquisition price of the car; b) for cars older than two years, the excise duty was calculated in the form of a progressive rate, determined based on a formula which took into account the age of the car and its cylinder capacity, reaching 65% of the acquisition price of the car.

In key with its previous case-law, the Court decided that the first paragraph of Article 90 of the EC Treaty should be interpreted as forbidding the establishment of an excise duty as long as the value of the excise duty imposed on second-hand cars older than two years and bought from another member state than that which introduced the excise duty, exceeds the residual value of the same excise duty incorporated in the acquisition price of similar cars, already registered in the member state which established that excise duty. Furthermore, the Court refused to limit the temporal effects of the decision[10].

4. Taking into consideration the case-law of the ECJ, there is one conclusion: the legal issue is not determined by the existence of the excise duty (called *tax* by the legislator) or its rate, as the existence of a tax is part of the authority of member states of the EU; the legal issue is determined by the possibility that such a tax should make discrimination between domestic products and similar imported products or should protect domestic production, coming in opposition with the provisions of Article 90 of the EC Treaty. Basically, these were also the

[10] For a complete presentation of the Decision of the ECJ, see S. Deleanu, G. Fabian, C. F. Costas, B. Ionită, THE EUROPEAN COURT OF JUSTICE – Discussed decisions, Publishing House „Wolters Kluwer Romania", Bucharest, 2007).

arguments that the European Commission used to initiate an action against Romania's failure to observe the obligations assumed when it ratified the Community treaties[11].

Furthermore, the Romanian authorities should have also had in view the following elements:

- firstly, the impossibility to justify the discriminatory effects of the excise duty in discussion by the necessity to protect the environment, thesis supported by the Ministry of the Environment; as seen in the previously indicated cases (*Brzeziński*,; *Nádasdi and Németh*,), the Court does not consider that this goal can justify the failure to observe the provisions of the EC Treaty;

- secondly, the refusal of the ECJ to limit the temporal effects of the decision through which one could establish the incompatibility of an internal taxation measure with the provisions of Article 90 of the EC Treaty; consequently, in case the Court reaches the same conclusion in Romania in 2009, all the money illegally cashed in that period of time shall be paid back, plus the corresponding compensations.

5. Considering the recent developments in the field, relevant bodies proposed a funny solution to these legal issues: the incriminated provisions of the Code on Taxation were repealed and replaced by the provisions of the Emergency Ordinance no. 50/2008 of the Government based on which the taxation scheme was modified "according to the taxation principles brought to attention by the European Commission". As a consequence of this solution, a comparison was required between the tax to be paid following the application of Article. 214[1] of the Code on Taxation (in the period: January 1, 2007 – June 30, 2008) and the tax to be paid according to the provisions of the new Emergency Ordinance, resulting in: the tax payer (following a compensation!) should be paid back the money paid in excess for the tax or should pay, if needed, a tax difference.

6. Following the application of these legal provisions, the European Commission warned, informed and threatened the Romanian Government it would initiate the „infringement procedure" unless the discrimination introduced by the Romanian law is abolished within a reasonable period of time.

Revolted by the introduction in the Romanian fiscal environment of a new tax (which is quite a burden) and encouraged – at the same time – by the position of the European Commission towards our country, many natural and legal persons have attacked in Court – under different forms and on various legal bases – the car taxes, asking for and receiving back the money paid for the registration of the cars they bought from other Community states, mainly claiming the failure of the Romanian State to observe the primary Community regulations (especially Article 90 of the EU Treaty).

Romanian courts or tribunals – according to the provisions of Article 148 (2) of the revised Constitution (the provisions of the founding treaties of the European Union have priority as opposed to the contrary provisions of internal legislation) and to the provisions of Article 90 of the Treaty on the European Union – considered that the legal texts which led to the establishment of car taxes cannot be put into practice as they violate the Community rules and have thus accepted as viable all the complaints and advised that all illegally cashed money should be returned to their owners from the state budget[12]. The solution was righteously considered to be aberrant as the taxes already paid for second-hand cars within the meaning of the provisions of the Code on Taxation (now repealed), were illegally cashed as a consequence of the incompatibility between national and Community law. Consequently, they must be paid back and cannot be subject of any compensation. A potential compensation would theoretically be possible only if the taxes would have been imposed according to two contemporary legal acts or to other regulatory acts

[11] The notification addressed to Romania indicates, among other things, that: „Within the meaning of Community law, member states can encourage the actions leading to a better protection of the environment. Nevertheless, the criteria applied should be objective and pertinent in order to avoid any form of discrimination against the goods originating in other member states. The Romanian legislation on the car registration tax does not meet the full neutrality standard and has to be amended in order to be compatible with the EC Treaty".

[12] We exemplify: the Court in Arad, Commercial Division, the Administrative and Fiscal Department, civil sentence no.2563/7 November 2007 (published in the Romanian Magazine for Business Law no.1/2008, pages 89-100), the Court in Mureş, the Administrative and Fiscal Department, civil sentence no.525/14 November 2007, given in file no. 3287/102/2007 (not published), the Court in Timiş, the Administrative and Fiscal Department, civil sentence no. 14 January 2008, file no.7530/30/2007, the Court in Botoşani, the Administrative and Fiscal Department, civil sentence from 30 January 2008, file no.5868/40/2007, the Court in Cluj, the Administrative and Fiscal Department, civil sentence no. 165/1 February 2008, the Court in Ialomița, the Administrative and Fiscal Department, civil sentence no. 286/3 March 2008 (see M. St. Minea, C. F. Costas, *op.cit.,* pages 285-322, for a more detailed study of the Romanian case-law).

establishing a similar form of taxation. Under the circumstances, we discuss the replacement of an excise duty (indirect tax collected in the state budget) with a quasi-fiscal charge (to be collected as an extra-budget income in the Environment Fund). On the other hand, the retroactive application of the provisions of the Emergency Ordinance would infringe upon the constitutional principle of the non-retroactivity of law.

In order to give such verdicts, Romanian courts have also taken into consideration the case-law of the ECJ concluding unequivocally that any failure of a member state of the European Union to observe the Community regulations must and shall be sanctioned (see the cases against France – 1984 and 1999, Greece – 1988 and 1995, Denmark – 1988, Portugal – 1993, Poland – 2005 and Hungary – 2006)[13].

7. As a conclusion, the Romanian legislator – trying to partially remedy the illegal situation occurred – created a serious legal state of confusion when it replaced the provisions of Articles 214¹ - 214³ of the Code on Taxation (which established the tax for first car registration) with the provisions of the Emergency Ordinance no. 50/2008 of the Government (which introduced the pollution tax), because:

- the regulatory act amending the Code on Taxation – the Emergency Ordinance no. 50/2008 of the Government – is illegal in nature (as related to the internal law), as according to the provisions of Article 4 of the Code on Taxation: „any amendment or supplement of the Code shall be legally performed"; in this case, the ordinance which repealed the provisions of the Code on taxation on the car tax was not legally approved and contains provisions which cannot be applied (they are illegal). Consequently, the acts issued according to this ordinance cannot produce legal effects of an administrative act (according to the Fiscal Procedure Code);
- the replacement of an indirect tax (excise duty) with a quasi-fiscal charge is not an action which can prevent the „discrimination" created by protecting the domestic car production;
- the pollution tax – as it was conceived and calculated – does not essentially have the role to ensure environment protection because the sums of money required for the registration of a car for the first time in Romania are higher for less polluting vehicles (new vehicles with Euro 4 and Euro 5 engines) and lower for older vehicles (which are more polluting as they are not equipped with environmentally-friendly engines);
- the provision according to which the sums of money (cashed within the meaning of the provisions of the Code on Taxation - repealed) to be paid back from the budget are to be compensated by the sums due according to the provisions of the Emergency Ordinance no. 50/2008 of the Government is totally aberrant because: the taxes imposed within the meaning of the Code on Taxation – for second-hand vehicles – were illegally cashed as a consequence of the incompatibility between national and Community law (consequently, this money has to be paid back, and in no case compensated); a potential compensation would theoretically be possible only if the taxes would have been imposed according to contemporary legal acts (otherwise, the retroactive application of the provisions of the emergency ordinance would infringe upon the constitutional principle of the non-retroactivity of law) or to other regulatory acts establishing a similar form of taxation (under the circumstances, we discuss the replacement of an *excise duty* with a *quasi-fiscal charge*)[14].

8. Under these circumstances, we believe it is a must to eliminate the national legal provisions (contrary to Community rules) which led to the creation of discriminatory situations limiting the free movement of goods on the territory of the European Union. As the Community law, being an autonomous system, must be equally put into practice in all member states of the European Union, it must be integrated into national systems, it must be considered as being part of each Community state's national law and consequently, must be directly implemented[15].

As far as car taxation in EU states is concerned, a solution at Community level could be reached by harmonizing the registration taxes existing now in certain member states. In this sense, having regard to the decisions of the ECJ, the Commission is expected to shortly draft a proposal.

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[13] See S. Deleanu, G. Fabian, C. F. Costas, B. Ioniță, *op.cit. supra.*

[14] We believe it is obvious that „apples cannot be replaced with pears"!

[15] See N. Diaconu, "Compatibility of national rules with Community law in the car tax", in Surveys of Commercial Law no.12/2008.