



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 September 2015*

(Reference for a preliminary ruling — Criminal proceedings concerning offences in relation to value added tax (VAT) — Article 325 TFEU — National legislation laying down absolute limitation periods which may give rise to impunity in respect of offences — Potential prejudice to the financial interest of the European Union — Obligation, for the national court, to disapply any provision of national law liable to affect fulfilment of the Member States' obligations under EU law)

In Case C-105/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Cuneo (Italy), made by decision of 17 January 2014, received at the Court on 5 March 2014, in the criminal proceedings against

Ivo Taricco,

Ezio Filippi,

Isabella Leonetti,

Nicola Spagnolo,

Davide Salvoni,

Flavio Spaccavento,

Goranco Anakiev,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, L. Bay Larsen, T. von Danwitz and J.-C. Bonichot, Presidents of Chambers, A. Arabadjiev, M. Safjan, D. Šváby, M. Berger (Rapporteur), A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 3 March 2015,

after considering the observations submitted on behalf of:

— Mr Anakiev, by L. Sani, avvocato,

* Language of the case: Italian.

- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Salvatorelli and L. Ventrella, avvocati dello Stato,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by P. Rossi and R. Lyal, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 101 TFEU, 107 TFEU and 119 TFEU as well as Article 158 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
- 2 The request has been made in criminal proceedings brought against Mr Taricco, Mr Filippi, Ms Leonetti, Mr Spagnolo, Mr Salvoni, Mr Spaccavento and Mr Anakiev ('the accused'), for forming and organising a conspiracy to commit various offences in relation to value added tax ('VAT').

Legal context

EU Law

- 3 Article 325 TFEU provides:

'1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

...'

The Convention on the protection of the European Communities' financial interests

- 4 According to the preamble to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Luxembourg on 26 July 1995 (OJ 1995 C 316, p. 49; 'the PFI Convention'), the contracting parties to that convention, Member States of the European Union, are convinced 'that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring [the] interests in question' and of 'the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty'.

5 Article 1(1) of the PFI Convention provides:

‘For the purposes of this Convention, fraud affecting the European Communities’ financial interests shall consist of:

...

(b) in respect of revenue, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

..’

6 Article 2(1) of the PFI Convention provides:

‘Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1(1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding [EUR] 50 000.’

Directive 2006/112

7 Article 131 of Directive 2006/112 provides:

‘The exemptions provided for in Chapters 2 to 9 [of Title IX of Directive 2006/112] shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.’

8 Article 138(1) of that directive provides as follows:

‘Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.’

9 Article 158 of that directive reads as follows:

‘1. ... Member States may provide for warehousing arrangements other than customs warehousing in the following cases:

(a) where the goods are intended for tax-free shops ...;

...

2. Where Member States exercise the option of exemption provided for in point (a) of paragraph 1, they shall take the measures necessary to ensure the correct and straightforward application of this exemption and to prevent any evasion, avoidance or abuse.

...’

Decision 2007/436/EC

- 10 Article 2(1) of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities’ own resources (OJ 2007 L 163, p. 17) is worded as follows:

‘Revenue from the following shall constitute own resources entered in the general budget of the European Union:

...

- (b) ... the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to Community rules. ...’

Italian law

- 11 Article 157 of the Italian Penal Code, as amended by Law No 251 of 5 December 2005 (GURI No 285 of 7 December 2005; ‘the Penal Code’), provides, in relation to limitation periods under criminal law:

‘Prosecution of an offence shall be time-barred after a period equal to the maximum duration of the penalty laid down by law for the offence itself; the foregoing notwithstanding, the limitation period shall be no less than six years for serious offences and four years for other offences, even where the latter are punishable only by a fine.

...’

- 12 Article 158 of the Penal Code sets the starting point of the limitation period as follows:

‘Time shall start to run from the day on which the offence was committed or, in the case of attempted or continuing offences, from the date on which the offender’s activity or continuing activity ceased.

...’

- 13 Article 159 of the Penal Code provides, in relation to the rules governing the suspension of the limitation period:

‘The limitation period shall be suspended in all cases where the suspension of the procedure, of the trial or of the period prescribed for pre-trial detention is provided for by a special legislative provision, as well as in the following cases:

- (1) consent to bring a prosecution;
- (2) transfer of the case to another jurisdiction;
- (3) suspension of the proceedings or of the trial because the parties or the lawyers are unable to attend, or at the request of the accused or of his lawyer. ...

...

The limitation period shall resume running from the date on which the cause of its suspension ceases to exist.’

- 14 Article 160 of the Penal Code, which governs interruption of the limitation period, provides:

‘The limitation period shall be interrupted by judgment or conviction.

An order applying protective measures ... and an order fixing the preliminary hearing ... shall also interrupt the limitation period.

If it is interrupted, the limitation period shall start to run anew from the day of the interruption. If there is more than one interruption, the limitation period shall start to run from the last such interruption; however, the periods laid down in Article 157 may not, in any circumstances, be extended beyond the periods referred to in the second subparagraph of Article 161, with the exception of the offences referred to in Article 51(3)a and (3)c of the Code of Criminal Procedure.’

- 15 According to Article 161 of the Penal Code, concerning the effects of suspending and interrupting the limitation period:

‘The suspension and interruption of the limitation period shall affect all those who committed the offence.

With the exception of the prosecution of offences provided for in Article 51(3)b and (3)c of the Code of Criminal Procedure, an interruption of the limitation period may give rise to an extension of that period by no more than one quarter of the maximum prescribed period ...’

- 16 Article 416 of the Penal Code provides that instigating a criminal conspiracy is punishable by a term of imprisonment of up to seven years. Merely taking part in such a conspiracy is punishable by a term of imprisonment of up to five years.

- 17 In accordance with Article 2 of Legislative Decree No 74, laying down new rules governing offences in relation to income tax and value added tax (decreto legislativo n. 74, nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto), of 10 March 2000 (GURI No 76 of 31 March 2000; ‘Legislative Decree No 74/2000’), the submission of a fraudulent VAT return through the use of invoices or other documents relating to non-existent transactions is punishable by a term of imprisonment of between one and a half years and six years. In accordance with Article 8 of Legislative Decree No 74/2000, the issuing of false invoices to enable third parties to evade VAT is punishable by the same penalty.

The facts of the main proceedings and the questions referred for a preliminary ruling

- 18 The accused are charged before the Tribunale di Cuneo with having formed and organised, during the fiscal years 2005 to 2009, a conspiracy to commit various offences in relation to VAT. They are alleged to have put in place fraudulent ‘VAT carousel’ legal arrangements, involving, inter alia, the creation of shell companies and the use of false documents, by means of which they were able to acquire goods — in this case, bottles of champagne — VAT free. This allowed Planet Srl (‘Planet’) to procure products at costs below the market price, which it could then sell to its customers, thereby distorting the market.
- 19 Planet is alleged to have taken receipt of invoices issued by shell companies for non-existent transactions. Those companies did not submit any annual VAT returns or, where they did submit returns, did not actually pay the corresponding VAT. Planet, on the other hand, entered the invoices issued by those shell companies in its accounts, wrongly deducting the VAT recorded in each of them, and, consequently, submitted fraudulent annual VAT returns.

- 20 It can be seen from the order for reference that various procedural matters have arisen in the case before the referring court and it has rejected numerous objections raised by the accused at the preliminary hearing held before it. At this stage, the referring court must, first, deliver a judgment dismissing the charges in respect of one of the accused, Mr Anakiev, since the offences in question are time-barred as regards him and, secondly, it must commit the other accused persons for trial, and fix a hearing before the trial court.
- 21 The referring court indicates that the offences which the accused are alleged to have committed are punishable, under Articles 2 and 8 of Legislative Decree No 74/2000, by a term of imprisonment of up to six years. However, the offence of conspiracy, laid down in Article 416 of the Penal Code, of which the accused could also be found guilty, is punishable by a term of imprisonment of up to seven years for those instigating the conspiracy and up to five years for those merely taking part. It follows that, for those instigating the conspiracy, the limitation period is seven years, whereas it is six years for the others. The last event interrupting the limitation period was the order fixing the preliminary hearing.
- 22 Despite the interruption of the limitation period, that period cannot be extended, pursuant to the last subparagraph of Article 160 of the Penal Code, read in conjunction with Article 161 of that Code (‘the national provisions at issue’), beyond seven years and six months or, as regards those instigating the conspiracy, eight years and nine months from the date on which the offences were committed. According to the referring court, it is certain that all the offences — in so far as they are not already time-barred — will be time-barred by 8 February 2018 at the latest, before a final judgment can be delivered as regards the accused. As a result, the accused, who are alleged to have committed VAT evasion amounting to several million euros, may enjoy *de facto* impunity as a result of the expiration of the limitation period.
- 23 According to the referring court, that result was none the less foreseeable, because of the rule laid down in the last subparagraph of Article 160 of the Penal Code, read in conjunction with the second subparagraph of Article 161 of that code, which, by allowing the limitation period to be extended, following an interruption, by only a quarter of its initial duration, is tantamount to not interrupting the limitation period in most criminal proceedings.
- 24 Criminal proceedings in relation to tax evasion, such as that which the accused are alleged to have committed, usually involve very complex investigations, with the result that the proceedings already take a considerable amount of time at the preliminary investigation stage. The duration of the entire proceedings is such that in Italy, in that type of case, *de facto* impunity is a normal, rather than exceptional, occurrence. Furthermore, it is often impossible for the Italian tax authorities to recover the amount of the taxes evaded through the offence in question.
- 25 In that context, the referring court takes the view that the national provisions at issue indirectly authorise unfair competition by some economic operators established in Italy in relation to undertakings established in other Member States, thus infringing Article 101 TFEU. Moreover, those provisions are liable to favour certain undertakings, in breach of Article 107 TFEU. In addition, those provisions create a *de facto* VAT exemption which is not laid down in Article 158(2) of Directive 2006/112. Lastly, the *de facto* impunity enjoyed by tax evaders infringes the guiding principle, laid down in Article 119 TFEU, that the Member States must ensure that their public finances are sound.
- 26 However, the referring court considers that, if it were able to disapply the national provisions at issue, it would be possible to ensure the effective application of EU law in Italy.

27 In those circumstances, the Tribunale di Cuneo decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

- (1) In so far as it provides for the limitation period to be extended by only a quarter following interruption and, therefore, allows crimes to become time barred, resulting in impunity, even though criminal proceedings were brought in good time, has the amendment to the last subparagraph of Article 160 of the Italian Criminal Code made by Law No 251 of 2005 led to infringement of the provision protecting competition in Article 101 TFEU?
- (2) Has the Italian State, in amending by Law No 251 of 2005 the last subparagraph of Article 160 of the Italian Criminal Code, in so far as this provides for the limitation period to be extended by only a quarter following interruption, which means therefore that there are no penal consequences for crimes committed by unscrupulous economic operators, unlawfully introduced a form of aid prohibited by Article 107 TFEU?
- (3) Has the Italian State, in amending by Law No 251 of 2005 the last subparagraph of Article 160 of the Italian Criminal Code, in so far as this provides for the limitation period to be extended by only a quarter following interruption, thus conferring impunity on those who exploit the Community directive, unlawfully added a further exemption to those exhaustively listed by Article 158 of Council Directive 2006/112/EC of 28 November 2006?
- (4) In so far as it provides for the limitation period to be extended by only a quarter following interruption and, therefore, fails to penalise conduct that deprives the State of the resources necessary in order to meet its obligations to the European Union also, has the amendment to the last subparagraph of Article 160 of the Italian Criminal Code made by Law No 251 of 2005 led to breach of the principle of sound public finances laid down by Article 119 TFEU?

Consideration of the questions referred

Admissibility of the questions

- 28 Mr Anakiev and the German and Italian governments take the view that the questions referred by the national court are inadmissible. In that respect, Mr Anakiev submits that the provisions of national law establishing the rules on limitation periods for tax offences were recently changed, with the result that the considerations of the referring court are unfounded. The Italian and German governments submit, in essence, that the issues of interpretation raised by referring court are purely abstract or hypothetical and bear no relation to the actual facts of the main action or its subject matter.
- 29 It must be borne in mind in that respect that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, inter alia, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 34 and the case-law cited).
- 30 It follows that questions concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main

action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment in *Halaf*, C-528/11, EU:C:2013:342, paragraph 29 and the case-law cited).

- 31 However, as the Advocate General essentially pointed out in paragraph 45 et seq. of her Opinion, the conditions which may lead the Court to refuse to rule on the questions referred are clearly not met in the present case. The information contained in the order for reference with respect to the facts of the main proceedings enable the Court to give a useful answer to the referring court. In addition, that information is sufficient to enable the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union to express their views effectively.
- 32 Furthermore, it is clear from the order for reference that the questions referred to the Court are in no way hypothetical and that they are related to the actual facts of the dispute in the main proceedings, since they concern the interpretation of several provisions of EU law that the referring court considers to be of crucial importance for its next decision in the main proceedings, particularly as regards the committal of the accused for trial.
- 33 In those circumstances, the request for a preliminary ruling must be declared admissible.

The third question

- 34 By its third question, which it is appropriate to deal with first, the referring court asks, in essence, whether a national rule in relation to limitation periods for criminal offences such as that laid down by the national provisions at issue — which provided, at the material time in the main proceedings, that the interruption of criminal proceedings in relation to VAT offences had the effect of extending the limitation period by only a quarter of its initial duration, with the result that accused persons were liable to enjoy de facto impunity — amounts to introducing a VAT exemption which is not laid down in Article 158 of Directive 2006/112. Furthermore, in the event that the response to that question is in the affirmative, the referring court asks whether it may disapply those provisions.

Whether a national rule such as that established by the national provisions at issue complies with EU law

- 35 As a preliminary point, it must be noted that although the third question refers to Article 158 of Directive 2006/112, it is clear from the reasons stated for the order for reference that, by that question, the referring court essentially seeks to ascertain whether a national rule such as that established by the provisions at issue amounts to an impediment to the effective fight against VAT evasion in the Member State concerned, in a manner incompatible with Directive 2006/112 and, more generally, with EU law.
- 36 In that respect, it must be recalled that, in relation to VAT, it follows from Directive 2006/112, read in conjunction with Article 4(3) TEU, that Member States are not only under a general obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on their territory, but must also fight against tax evasion (see, to that effect, judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 25 and the case-law cited).
- 37 Furthermore, Article 325 TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, obliges them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests (see judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 26 and the case-law cited).

- 38 The Court noted, in that respect, that since the European Union's own resources include, inter alia, as provided in Article 2(1) of Decision 2007/436, revenue from application of a uniform rate to the harmonised VAT assessment bases determined according to EU rules, there is thus a direct link between the collection of VAT revenue in compliance with the EU law applicable and the availability to the EU budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second (see judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 26).
- 39 Although the Member States have freedom to choose the applicable penalties — which may take the form of administrative penalties, criminal penalties or a combination of the two — in order to ensure that all VAT revenue is collected and, in so doing, that the financial interests of the European Union are protected in accordance with the provisions of Directive 2006/112 and Article 325 TFEU (see, to that effect, judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 34 and the case-law cited), criminal penalties may nevertheless be essential to combat certain serious cases of VAT evasion in an effective and dissuasive manner.
- 40 Moreover, it must be recalled that, under Article 2(1) of the PFI Convention, the Member States are to take the necessary measures to ensure that conduct constituting fraud affecting the European Union's financial interests is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty.
- 41 The concept of 'fraud' is defined in Article 1 of the PFI Convention as 'any intentional act or omission relating to ... the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European [Union] or budgets managed by, or on behalf of, the European [Union]'. The concept therefore covers revenue derived from applying a uniform rate to the harmonised VAT assessment bases determined according to EU rules. That conclusion cannot be called into question by the fact that VAT is not collected directly for the account of the European Union, since Article 1 of the PFI Convention specifically does not lay down such a condition, which would be contrary to that convention's objective of vigorously combatting fraud affecting the European Union's financial interests.
- 42 In the present case, it can be seen from the order for reference that the national legislation lays down criminal penalties for the offences at issue in the main proceedings, namely, inter alia, conspiracy to commit offences in relation to VAT and VAT evasion amounting to several million euros. Such offences constitute cases of serious fraud affecting the European Union's financial interests.
- 43 It follows from all of the considerations set out in paragraphs 37 and 39 to 41 of the present judgment that the Member States must ensure that such cases of serious fraud are punishable by criminal penalties which are, in particular, effective and dissuasive. Moreover, the measures adopted in that respect must be the same as those which the Member States adopt in order to combat equally serious cases of fraud affecting their own financial interests.
- 44 Thus, it is for the referring court to determine, taking into account all the relevant facts and points of law, whether the applicable national provisions allow the effective and dissuasive penalisation of cases of serious fraud affecting the financial interests of the European Union.
- 45 In that respect, it should be noted that neither the referring court nor the interested parties which submitted observations to the Court of Justice have called into question the dissuasiveness, in themselves, of the criminal penalties indicated by that court, namely a term of imprisonment of up to seven years, nor the compliance with EU law of the fact that there is a limitation period in Italian law in respect of acts constituting fraud affecting the financial interests of the Union.

- 46 However, as can be seen from the order for reference, the national provisions at issue, by introducing — in the event of interruption of the limitation period by one of the events indicated in Article 160 of the Penal Code — a rule according to which the limitation period may in no case be extended by more than a quarter of its initial duration, have the effect, given the complexity and duration of the criminal proceedings leading to the adoption of a final judgment, of neutralising the temporal effect of an event interrupting the limitation period.
- 47 If the national court concludes that the application of the national provisions in relation to the interruption of the limitation period has the effect that, in a considerable number of case, the commission of serious fraud will escape criminal punishment, since the offences will usually be time-barred before the criminal penalty laid down by law can be imposed by a final judicial decision, it would be necessary to find that the measures laid down by national law to combat fraud and any other illegal activity affecting the financial interests of the European Union could not be regarded as being effective and dissuasive, which would be incompatible with Article 325(1) TFEU, Article 2(1) of the PFI Convention as well as Directive 2006/112, read in conjunction with Article 4(3) TEU.
- 48 In addition, it is for the national court to verify whether the national provisions in question apply to cases of VAT evasion in the same manner as they apply to fraud affecting the Italian Republic's own financial interests, as required under Article 325(2) TFEU. That would not be the case, in particular, if the second subparagraph of Article 161 of the Penal Code laid down longer limitation periods for offences, similar in nature and seriousness, affecting the Italian Republic's financial interests. As the European Commission observed at the hearing before the Court, and subject to verification by the national court, Italian law does not lay down any absolute limitation period in respect of the offence of conspiracy to commit crimes in relation to import duties on tobacco products.
- The consequences of incompatibility of the national provisions at issue with EU law and the role of the national court
- 49 In the event that the national court concludes that the national provisions at issue do not satisfy the requirement of EU law that measures to counter VAT evasion be effective and dissuasive, that court would have to ensure that EU law is given full effect, if need be by disapplying those provisions and thereby neutralising the consequence referred to in paragraph 46 above, without having to request or await the prior repeal of those articles by way of legislation or any other constitutional procedure (see, to that effect, judgment in *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraph 72 and the case-law cited, and judgment in *Küçükdeveci*, C-555/07, EU:C:2010:21, paragraph 51 and the case-law cited).
- 50 In that respect, it must be emphasised that the Member States' obligation to counter illegal activities affecting the financial interests of the European Union through dissuasive and effective measures, and their obligation to take the same measures to counter fraud affecting those interests as they take to counter fraud affecting their own financial interests, are obligations imposed, inter alia, by EU primary law, namely Article 325(1) and (2) TFEU.
- 51 Those provisions of EU primary law impose on Member States a precise obligation as to the result to be achieved that is not subject to any condition regarding application of the rule, noted in the previous paragraph, which they lay down.
- 52 The provisions of Article 325(1) and (2) TFEU therefore have the effect, in accordance with the principle of the precedence of EU law, in their relationship with the domestic law of the Member States, of rendering automatically inapplicable, merely by their entering into force, any conflicting provision of national law (see to that effect, inter alia, judgment in *ANAFE*, C-606/10, EU:C:2012:348, paragraph 73 and the case-law cited).

- 53 It should be added that if the national court decides to disapply the national provisions at issue, it must also ensure that the fundamental rights of the persons concerned are respected. Indeed, in that case penalties may be imposed on those persons which, in all likelihood, would not have been imposed if those provisions of national law had been applied.
- 54 In that respect, several interested parties which submitted observations to the Court referred to Article 49 of the Charter of Fundamental Rights of the European Union ('the Charter') which enshrines the principles of legality and proportionality of criminal offences and penalties, according to which, inter alia, no one is to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed.
- 55 However, subject to verification by the national court, the sole effect of the disapplication of the national provisions at issue would be to not shorten the general limitation period in the context of pending criminal proceedings, to allow the effective prosecution of the alleged crimes, and to ensure, if necessary, that penalties intended to protect the financial interests of the European Union and those intended to protect the financial interests of the Italian Republic are treated in the same way. Such a disapplication of national law would not infringe the rights of the accused, as guaranteed by Article 49 of the Charter.
- 56 It would in no way lead to a conviction of the accused for an act or omission which did not constitute a criminal offence under national law at the time when it was committed (see, by analogy, judgment in *Niselli*, C-457/02, EU:C:2004:707, paragraph 30), nor to the application of a penalty which, at that time, was not laid down by national law. On the contrary, the acts which the accused are alleged to have committed constituted, at the time when they were committed, the same offence and were punishable by the same criminal penalties as those applicable at present.
- 57 The case-law of the European Court of Human Rights in relation to Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which enshrines rights corresponding to those guaranteed by Article 49 of the Charter, support that conclusion. Thus, according to that case-law, the extension of the limitation period and its immediate application do not entail an infringement of the rights guaranteed by Article 7 of that convention, since that provision cannot be interpreted as prohibiting an extension of limitation periods where the relevant offences have never become subject to limitation (see, to that effect, *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 149, ECHR 2000-VI; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 110 and the case-law cited, 17 September 2009, and *AO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, §§ 563, 564 and 570 and the case-law cited, 20 September 2011).
- 58 In the light of the foregoing, the answer to the third question is that a national rule in relation to limitation periods for criminal offences such as that laid down by the national provisions at issue — which provided, at the material time in the main proceedings, that the interruption of criminal proceedings concerning serious fraud in relation to VAT had the effect of extending the limitation period by only a quarter of its initial duration — is liable to have an adverse effect on the fulfilment of the Member States' obligations under Article 325(1) and (2) TFEU if that national rule prevents the imposition of effective and dissuasive penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or provides for longer limitation periods in respect of cases of fraud affecting the financial interests of the Member State concerned than in respect of those affecting the financial interests of the European Union, which it is for the national court to verify. The national court must give full effect to Article 325(1) and (2) TFEU, if need be by disapplying the provisions of national law the effect of which would be to prevent the Member State concerned from fulfilling its obligations under Article 325(1) and (2) TFEU.

The first, second and fourth questions

- 59 By its first, second and fourth question, which it is appropriate to examine together, the referring court asks, in essence, whether a limitation system applicable to criminal offences in relation to VAT, such as that established by the national provisions at issue in their versions in force at the material time, may be assessed in the light of Articles 101 TFEU, 107 TFEU and 119 TFEU.
- 60 First, as regards Article 101 TFEU, that provision prohibits all agreements between undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. However, as the Advocate General noted, in essence, in point 60 of her Opinion, a potentially inadequate enforcement of national criminal law provisions in relation to VAT does not necessarily promote collusive conduct between undertakings, contrary to Article 101 TFEU, read in conjunction with Article 4(3) TEU.
- 61 As regards, secondly, the prohibition of State aid laid down in Article 107 TFEU, it should be recalled that a measure by which the public authorities grant certain undertakings favourable tax treatment which, although not involving the transfer of State resources, places the recipients in a more favourable financial position than other taxpayers amounts to State aid within the meaning of Article 107(1) TFEU (see, inter alia, judgment in *P*, C-6/12, EU:C:2013:525, paragraph 18 and the case-law cited).
- 62 Although the ineffective and/or non-dissuasive nature of penalties laid down in relation to VAT may potentially give a financial advantage to the undertakings concerned, Article 107 TFEU is nevertheless not applicable in the present case, since all the transactions are subject to the VAT system and any offence committed in relation to VAT is punishable under criminal law, except in the specific cases in which the rules on limitation periods might eliminate the penal consequences of certain offences.
- 63 Thirdly, as regards Article 119 TFEU, that provision mentions, in its third paragraph, as one of the guiding principles that are to govern the activities of the Member States in the adoption of an economic and monetary policy, the principle that Member States must ensure that their public finances are sound.
- 64 It must be pointed out that the question whether the provisions of national law at issue that may give rise to impunity in respect of certain offences relating to VAT comply with that principle of sound public finances does not fall within the scope of Article 119 TFEU, since it is only very indirectly linked to that obligation on the Member States.
- 65 In those circumstances, the answer to the first, second and fourth questions is that a limitations system applicable to criminal offences in relation to VAT, such as that established by the national provisions at issue in their versions in force at the material time, cannot be assessed in the light of Articles 101 TFEU, 107 TFEU and 119 TFEU.

Costs

- 66 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 (Grand Chamber) hereby rules:

- 1. A national rule in relation to limitation periods for criminal offences such as that laid down by the last subparagraph of Article 160 of the Penal Code, as amended by Law No 251 of 5 December 2005, read in conjunction with Article 161 of that Code — which provided, at the material time in the main proceedings, that the interruption of criminal proceedings concerning serious fraud in relation to value added tax had the effect of extending the limitation period by only a quarter of its initial duration — is liable to have an adverse effect on fulfilment of the Member States' obligations under Article 325(1) and (2) TFEU if that national rule prevents the imposition of effective and dissuasive penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or provides for longer limitation periods in respect of cases of fraud affecting the financial interests of the Member State concerned than in respect of those affecting the financial interests of the European Union, which it is for the national court to verify. The national court must give full effect to Article 325(1) and (2) TFEU, if need be by disapplying the provisions of national law the effect of which would be to prevent the Member State concerned from fulfilling its obligations under Article 325(1) and (2) TFEU.**
- 2. A limitation system applicable to criminal offences in relation to value added tax such as that established by the last subparagraph of Article 160 of the Penal Code, as amended by Law No 251 of 5 December 2005, read in conjunction with Article 161 of that Code, cannot be assessed in the light of Articles 101 TFEU, 107 TFEU and 119 TFEU.**

[Signatures]