



Reports of Cases

Case C-574/15

**Criminal proceedings
against
Mauro Scialdone**

(Request for a preliminary ruling from the Tribunale di Varese)

(Reference for a preliminary ruling — Value added tax (VAT) — Protection of the European Union's financial interests — Article 4(3) TEU — Article 325(1) TFEU — Directive 2006/112/EC — PFI Convention — Penalties — Principles of equivalence and effectiveness — Failure to pay, within the time limit prescribed by law, the VAT resulting from an annual tax return — National legislation imposing a custodial sentence only where the amount of unpaid VAT exceeds a certain criminalisation threshold — National legislation imposing a lower criminalisation threshold for a failure to pay withholding income tax)

Summary — Judgment of the Court (Grand Chamber), 2 May 2018

1. *Own resources of the European Union — Protection of the European Union's financial interests — Fight against fraud and other illegal activities — Obligation of the Member States to establish effective and deterrent penalties — Concept of fraud and any other illegal activities — Failure to pay, within the time limit prescribed by law, the value added tax resulting from the annual tax return — Illegal activity liable to affect the financial interests of the European Union*

(Art. 325(1) TFEU; Council Directive 2006/112, Arts 206 and 250(1); Convention on the protection of the European Communities' financial interests, Art. 1(1)(b))

2. *Own resources of the European Union — Protection of the European Union's financial interests — Fight against fraud and other illegal activities — Obligation of the Member States to establish effective and deterrent penalties — Scope — Tax offences in the field of value added tax — Failure to pay, within the time limit prescribed by law, the value added tax resulting from the annual tax return — National legislation imposing a custodial sentence — Higher criminalisation threshold than for a failure to pay withholding income tax — Lawfulness*

(Art. 4(3) TEU; Art. 325(1) TFEU; Council Directive 2006/112)

1. See the text of the decision.

(see paras 37-40, 44, 45)

2. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 4(3) TEU, and Article 325(1) TFEU must be interpreted as not precluding national legislation which provides that failure to pay, within the time limit prescribed by law, the value added tax (VAT) resulting from the annual tax return for a given financial year

constitutes a criminal offence punishable by a custodial sentence only when the amount of unpaid VAT exceeds a criminalisation threshold of EUR 250 000, whereas a criminalisation threshold of EUR 150 000 is laid down for the offence of failing to pay withholding income tax.

(see para. 61, operative part)