



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 December 2017\*

(Reference for a preliminary ruling — Article 325 TFEU — Judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555) — Criminal proceedings for infringements relating to value added tax (VAT) — National legislation laying down limitation periods liable to prevent the prosecution of infringements — Activities affecting the financial interests of the EU — Obligation to disapply any provisions of national law liable to have an adverse effect on the fulfilment of the Member States' obligations under EU law — Principle that offences and penalties must be defined by law)

In Case C-42/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte costituzionale (Constitutional Court, Italy), made by decision of 23 November 2016, received at the Court on 26 January 2017, in the criminal proceedings against

**M.A.S.,**

**M.B.**

intervener:

**Presidente del Consiglio dei Ministri,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça (Rapporteur), C.G. Fernlund and C. Vajda, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, A. Arabadjiev, M. Safjan, F. Biltgen, K. Jürimäe, M. Vilaras and E. Regan, Judges,

Advocate General: Y. Bot,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 29 May 2017,

after considering the observations submitted on behalf of:

- M.A.S., by G. Insolera, A. Soliani and V. Zeno-Zencovich, avvocati,
- M.B., by N. Mazzacuva and V. Manes, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and G. De Bellis, G. Galluzzo and S. Fiorentino, avvocati dello Stato,

\* Language of the case: Italian.

– the European Commission, by P. Rossi, J. Baquero Cruz, H. Krämer and K. Banks, acting as Agents, after hearing the Opinion of the Advocate General at the sitting on 18 July 2017, gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 325(1) and (2) TFEU as interpreted by the judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555) (‘the *Taricco* judgment’).
- 2 The request has been made in criminal proceedings against M.A.S. and M.B. for infringements relating to value added tax (VAT).

### **Legal context**

#### ***EU law***

- 3 Article 325(1) and (2) 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.’

#### ***Italian law***

- 4 Article 25 of the Constitution provides:

‘No one may be diverted from the ordinary court established by law.

No one may be punished except under a law already in force before the act was committed.

No one may be subjected to preventive measures except in cases provided for by law.’
- 5 Article 157 of the Codice penale (Criminal Code), as amended by Legge n. 251 (Law No 251) of 5 December 2005 (GURI No 285, 7 December 2005), (‘the Criminal Code’) provides:

‘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, and in any event a period not less than six years in the case of a serious offence and four years in the case of another offence, even where they are punishable only by a fine.

...’

6 Article 160 of the Criminal Code provides:

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

An order applying personal 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 run from the last of them; however, the periods laid down in Article 157 may not in any case be extended beyond the periods referred to in the second paragraph of Article 161, with the exception of the offences referred to in Article 51(3 *bis*) and (3 *quater*) of the Code of Criminal Procedure.’

7 In accordance with the second paragraph of Article 161 of the Criminal Code:

‘With the exception of the prosecution of offences referred to in Article 51(3 *bis*) and (3 *quater*) of the Code of Criminal Procedure, an interruption of the limitation period may not in any case lead to an extension of the period by more than one quarter of the maximum prescribed period ...’

8 Under Article 2 of Decreto legislativo n. 74, nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto (Legislative Decree No 74 on new rules on offences relating to income tax and value added tax) of 10 March 2000 (GURI No 76, 31 March 2000, ‘Decree No 74/2000’), the submission of a fraudulent VAT declaration mentioning invoices or other documents relating to non-existent transactions is punishable by a term of imprisonment from one year and six months to six years.

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

9 The Court held in the *Taricco* judgment that the last paragraph of Article 160 in conjunction with Article 161 of the Criminal Code (‘the provisions of the Criminal Code at issue’), in so far as they provide that the interruption of criminal proceedings concerning serious fraud in relation to VAT has the effect of extending the limitation period by only a quarter of its initial duration, are liable to have an adverse effect on the fulfilment of the Member States’ obligations under Article 325(1) and (2) TFEU if those national rules prevent 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 provide 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. The Court further held that 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 those provisions of the FEU Treaty.

10 The Corte suprema di cassazione (Court of Cassation, Italy) and the Corte d’appello di Milano (Court of Appeal, Milan, Italy), which have referred questions of constitutionality to the Corte costituzionale (Constitutional Court, Italy), are of the view that the rule in that judgment applies to two cases pending before them. Those proceedings concern infringements covered by Decree No 74/2000 which may be classified as serious. Furthermore, prosecution of those infringements would be time-barred if the provisions of the Criminal Code at issue were to be applied, whereas in the opposite case the proceedings could lead to convictions.

11 The Corte d’appello di Milano (Court of Appeal, Milan) doubts that there is compliance with the obligation under Article 325(2) TFEU as regards the proceedings pending before it. The offence of criminal association with a view to smuggling foreign manufactured tobacco, contrary to Article 291

*quater* of Decreto del Presidente della Repubblica n. 43, recante approvazione del testo unico delle disposizioni legislative in materia doganale (Decree of the President of the Republic No 43 approving the single text of the legislative provisions in customs matters) of 23 January 1973 (GURI No 80, 28 March 1973), although comparable to infringements covered by Decree No 74/2000, such as those at issue in the main proceedings, is not subject to the same rules on the maximum length of the limitation period as those infringements.

- 12 The Corte suprema di cassazione (Court of Cassation) and the Corte d'appello di Milano (Court of Appeal, Milan) therefore consider that, in compliance with the rule stated in the *Taricco* judgment, they should disapply the limitation period laid down in the provisions of the Criminal Code at issue and give judgment on the substance of the cases.
- 13 The Corte costituzionale (Constitutional Court) expresses doubts as to whether that approach is compatible with the overriding principles of the Italian constitutional order and with observance of the inalienable rights of the individual. In particular, according to that court, that approach is liable to interfere with the principle that offences and penalties must be defined by law, which requires that rules of criminal law are precisely determined and cannot be retroactive.
- 14 The Corte costituzionale (Constitutional Court) explains that in the Italian legal system the rules on limitation in criminal matters are substantive in character, and consequently fall within the scope of the principle of legality referred to in Article 25 of the Italian Constitution. Those rules must therefore be established by provisions that are precise and are in force at the time when the offence in question was committed.
- 15 In those circumstances, the Corte costituzionale (Constitutional Court) considers that it is being called on by the national courts concerned to decide whether the rule in the *Taricco* judgment complies with the requirement of 'determination' which, under the Constitution, must characterise substantive criminal law.
- 16 Consequently, first, it has to be ascertained whether the person concerned could know, at the time when the infringement in question was committed, that EU law requires the national court, where the conditions defined in that judgment are present, to disapply the provisions of the Criminal Code at issue. Moreover, the requirement that the criminal nature of the infringement and the applicable penalties can be determined clearly beforehand by the person committing the offence follows also from the case-law of the European Court of Human Rights on Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR').
- 17 Second, the referring court finds that the *Taricco* judgment does not give sufficient detail of the factors the national court must take into account in order to establish the 'significant number of cases' on which the application of the rule in that judgment depends, and thus imposes no limits on the discretion of the courts.
- 18 Moreover, according to the referring court, the *Taricco* judgment does not rule on the compatibility of the rule it sets out with the overriding principles of the Italian constitutional order and expressly leaves that task to the competent national courts. It notes in this respect that, in paragraph 53 of the judgment, it is stated that, if the national court decides to disapply the provisions of the Criminal Code at issue, it must also ensure that the fundamental rights of the persons concerned are respected. It adds that, in paragraph 55 of the judgment, any such disapplication is envisaged as being subject to verification by the national court of compliance with the rights of defendants.
- 19 Furthermore, the referring court observes that in the *Taricco* judgment the Court ruled on the issue of the compatibility of the rule in that judgment with Article 49 of the Charter of Fundamental Rights of the European Union ('the Charter') with regard only to the principle of non-retroactivity. It says that

the Court did not, however, examine the other aspect of the principle that offences and penalties must be defined by law, namely the requirement that the rules on criminal liability must be sufficiently precise. This is, however, a requirement which forms part of the constitutional traditions common to the Member States and is also to be found in the system of protection of the ECHR, thus corresponding to a general principle of EU law. Even if the rules on limitation in criminal matters in the Italian legal system were to be regarded as procedural rules, they would still have to be applied in accordance with precise provisions.

20 In those circumstances, the Corte costituzionale (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 325(1) and (2) TFEU to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where there is no sufficiently precise legal basis for such disapplication?’

(2) Is Article 325(1) and (2) TFEU to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where, in the legal system of the Member State concerned, limitation periods form part of substantive criminal law and are subject to the principle of the legality of criminal proceedings?’

(3) Is the [*Taricco* judgment] to be interpreted as requiring the criminal court to disapply national legislation on limitation periods which precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or which imposes shorter limitation periods for fraud affecting the financial interests of the European Union than for fraud affecting the financial interests of the State, even where such disapplication is at variance with the overriding principles of the constitution of the Member State concerned or with the inalienable rights of the individual conferred by the constitution of the Member State?’

21 By order of 28 February 2017, *M.A.S. and M.B.* (C-42/17, not published, EU:C:2017:168), the President of the Court allowed the referring court’s request that the present case be dealt with under the accelerated procedure in accordance with Article 23a of the Statute of the Court of Justice of the European Union and Article 105(1) of the Rules of Procedure of the Court.

## **Consideration of the questions referred**

### ***Preliminary observations***

22 The preliminary ruling procedure provided for in Article 267 TFEU sets up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, with the object of securing uniform interpretation of EU law and ensuring its consistency, its full effect and its autonomy (see, to that effect, Opinion 2/13 (Accession of the EU to the ECHR), of 18 December 2014, EU:C:2014:2454, paragraph 176).

- 23 The procedure provided for by Article 267 TFEU thus functions as an instrument of cooperation between the Court of Justice and national courts and tribunals, by means of which the former provides the latter with the points of interpretation of EU law which they need in order to decide the disputes before them (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 16).
- 24 It should be noted here that the Court, when answering questions referred for a preliminary ruling, must take account, under the division of jurisdiction between the EU judicature and the national courts and tribunals, of the factual and legislative context of the questions as described in the order for reference (judgment of 26 October 2017, *Argenta Spaarbank*, C-39/16, EU:C:2017:813, paragraph 38).
- 25 In the proceedings in which the *Taricco* judgment was delivered, the Tribunale di Cuneo (District Court, Cuneo, Italy) put questions to the Court on the interpretation of Articles 101, 107 and 119 TFEU and 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).
- 26 In the *Taricco* judgment the Court nonetheless found it necessary, for the purposes of the criminal proceedings pending in that Italian court, to provide it with an interpretation of Article 325(1) and (2) TFEU.
- 27 In the main proceedings, the Corte costituzionale (Constitutional Court) raises the question of a possible breach of the principle that offences and penalties must be defined by law which might follow from the obligation stated in the *Taricco* judgment to disapply the provisions of the Criminal Code at issue, having regard, first, to the substantive nature of the limitation rules in the Italian legal system, which means that those rules must be reasonably foreseeable by individuals at the time when the alleged offences are committed and cannot be retroactively altered *in peius*, and, second, to the requirement that any national rules on criminal liability must be founded on a legal basis that is precise enough to delimit and guide the national court's assessment.
- 28 It is therefore for the Court, in the light of the questions raised by the referring court with regard to that principle, which were not drawn to its attention in the case in which the *Taricco* judgment was given, to clarify the interpretation of Article 325(1) and (2) TFEU in that judgment.

### **Questions 1 and 2**

- 29 By its first and second questions, which should be considered together, the referring court essentially asks whether Article 325(1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to VAT, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the Union, or which lay down shorter limitation periods for cases of fraud affecting those interests than for those affecting the financial interests of the Member State concerned, including where compliance with that obligation would entail a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of that law.
- 30 It must be recalled that Article 325(1) and (2) TFEU requires the Member States to counter illegal activities affecting the financial interests of the Union through effective and deterrent measures, and to take the same measures to counter fraud affecting the financial interests of the Union as they take to combat fraud affecting their own financial interests.

- 31 Since the European Union's own resources, by virtue of Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ 2014 L 168, p. 105), include revenue from the application of a uniform rate to the harmonised VAT assessment bases determined in accordance with EU rules, there is 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, to that effect, judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 26, and the *Taricco* judgment, paragraph 38).
- 32 It is for the Member States to ensure effective collection of the Union's own resources (see, to that effect, judgment of 7 April 2016, *Degano Trasporti*, C-546/14, EU:C:2016:206, paragraph 21). On that basis, they are obliged to collect sums corresponding to the own resources which, because of fraud, have been withheld from the EU budget.
- 33 To ensure that all VAT revenue is collected, and thereby that the financial interests of the EU are protected, the Member States are free to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two (see, to that effect, judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 34, and the *Taricco* judgment, paragraph 39).
- 34 It should be observed, however, first, that criminal penalties may be essential to combat certain cases of serious VAT fraud in an effective and deterrent manner (see, to that effect, the *Taricco* judgment, paragraph 39).
- 35 Thus the Member States, if they are not to disregard their obligations under Article 325(1) and (2) TFEU, must ensure that, in cases of serious fraud affecting the EU's financial interests in relation to VAT, criminal penalties that are effective and deterrent are adopted (see, to that effect, the *Taricco* judgment, paragraphs 42 and 43).
- 36 Consequently, it must be considered that Member States are in breach of their obligations under Article 325(1) and (2) TFEU if the criminal penalties adopted to punish serious VAT fraud do not enable the collection in full of VAT to be guaranteed effectively. The Member States must also ensure that the limitation rules laid down by national law allow effective punishment of infringements linked to such fraud.
- 37 Second, in accordance with Article 325(2) TFEU, Member States must take the same measures to counter fraud affecting the financial interests of the Union, in particular in relation to VAT, as they take to counter fraud affecting their own financial interests.
- 38 As regards the consequences of the possible incompatibility of national legislation with Article 325(1) and (2) TFEU, it follows from the Court's case-law that that article imposes on the Member States precise obligations as to the result to be achieved, which are not subject to any condition regarding the application of the rules which they lay down (see, to that effect, the *Taricco* judgment, paragraph 51).
- 39 It is therefore for the competent national courts to give full effect to the obligations under Article 325(1) and (2) TFEU and to disapply national provisions, including rules on limitation, which, in connection with proceedings concerning serious VAT infringements, prevent the application of effective and deterrent penalties to counter fraud affecting the financial interests of the Union (see, to that effect, the *Taricco* judgment, paragraphs 49 and 58).
- 40 It should be recalled that in paragraph 58 of the *Taricco* judgment the national provisions at issue were regarded as liable to have an adverse effect on the fulfilment of the obligations of the Member State concerned under Article 325(1) and (2) TFEU if they prevented the imposition of effective and

deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the Union, or provided for shorter limitation periods for cases of fraud affecting those interests than for those affecting the financial interests of that Member State.

- 41 It is primarily for the national legislature to lay down rules on limitation that enable compliance with the obligations under Article 325 TFEU, in the light of the considerations set out by the Court in paragraph 58 of the *Taricco* judgment. It is that legislature's task to ensure that the national rules on limitation in criminal matters do not lead to impunity in a significant number of cases of serious VAT fraud, or are more severe for accused persons in cases of fraud affecting the financial interests of the Member State concerned than in those affecting the financial interests of the European Union.
- 42 It should be recalled here that an extension of a limitation period by the national legislature and its immediate application, including to alleged offences that are not yet time-barred, do not, in principle, infringe the principle that offences and penalties must be defined by law (see, to that effect, the *Taricco* judgment, paragraph 57, and the case-law of the European Court of Human Rights cited in that paragraph).
- 43 That being so, it should be added that the protection of the financial interests of the Union by the enactment of criminal penalties falls within the shared competence of the Union and the Member States within the meaning of Article 4(2) TFEU.
- 44 In the present case, at the material time for the main proceedings, the limitation rules applicable to criminal proceedings relating to VAT had not been harmonised by the EU legislature, and harmonisation has since taken place only to a partial extent by the adoption of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29).
- 45 The Italian Republic was thus, at that time, free to provide that in its legal system those rules, like the rules on the definition of offences and the determination of penalties, form part of substantive criminal law, and are thereby, like those rules, subject to the principle that offences and penalties must be defined by law.
- 46 The competent national courts, for their part, when they have to decide in proceedings before them to disapply the provision of the Criminal Code at issue, are required to ensure that the fundamental rights of persons accused of committing criminal offences are observed (see, to that effect, judgment in *Taricco*, paragraph 53).
- 47 In that respect, the national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 29 and the case-law cited).
- 48 In particular, where the imposition of criminal penalties is concerned, the competent national courts must ensure that the rights of defendants flowing from the principle that offences and penalties must be defined by law are guaranteed.
- 49 According to the referring court, those rights would not be observed if the provisions of the Criminal Code at issue were disapplied in the proceedings pending before it, in so far as, first, the persons concerned could not reasonably foresee before the delivery of the *Taricco* judgment that that Article 325 TFEU requires the national court to disapply those provisions in the circumstances set out in that judgment.

- 50 Second, according to the referring court, the national court would not be able to define the particular circumstances in which it would have to disapply those provisions, namely where they prevent the imposition of effective and deterrent penalties in a significant number of cases of serious fraud, without exceeding the limits imposed on its discretion by the principle that offences and penalties must be defined by law.
- 51 In this respect, the importance given, both in the EU legal order and in national legal systems, to the principle that offences and penalties must be defined by law, as to its requirements concerning the foreseeability, precision and non-retroactivity of the criminal law applicable, must be recalled.
- 52 That principle, as enshrined in Article 49 of the Charter, must be observed by the Member States when they implement EU law, in accordance with Article 51(1) of the Charter, which is the case where, in the context of their obligations under Article 325 TFEU, they provide for the application of criminal penalties for infringements relating to VAT. The obligation to ensure the effective collection of the Union's resources cannot therefore run counter to that principle (see, by analogy, judgment of 29 March 2012, *Belvedere Costruzioni*, C-500/10, EU:C:2012:186, paragraph 23).
- 53 Moreover, the principle that offences and penalties must be defined by law forms part of the constitutional traditions common to the Member States (see, with reference to the principle of non-retroactivity of the criminal law, judgments of 13 November 1990, *Fedesa and Others*, C-331/88, EU:C:1990:391, paragraph 42, and of 7 January 2004, *X*, C-60/02, EU:C:2004:10, paragraph 63) and has been enshrined in various international treaties, in particular in Article 7(1) of the ECHR (see, to that effect, judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 49).
- 54 It may be seen from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) that, in accordance with Article 52(3) of the Charter, the right guaranteed in Article 49 has the same meaning and scope as the right guaranteed by the ECHR.
- 55 As to the requirements that follow from the principle that offences and penalties must be defined by law, it must be observed, in the first place, that the European Court of Human Rights has held in relation to Article 7(1) of the ECHR that, under that principle, provisions of criminal law must comply with certain requirements of accessibility and foreseeability, as regards both the definition of the offence and the determination of the penalty (see ECtHR, 15 November 1996, *Cantoni v. France*, CE:ECHR:1996:1115JUD001786291, § 29; ECtHR, 7 February 2002, *E.K. v. Turkey*, CE:ECHR:2002:0207JUD002849695, § 51; ECtHR, 29 March 2006, *Achour v. France*, CE:ECHR:2006:0329JUD006733501, § 41; and ECtHR, 20 September 2011, *OAO Neftyanaya Kompaniya Yukos v. Russia*, CE:ECHR:2011:0920JUD001490204, §§ 567 to 570).
- 56 In the second place, the requirement that the applicable law must be precise, which is inherent in that principle, means that the law must clearly define offences and the penalties which they attract. That condition is met where the individual is in a position, on the basis of the wording of the relevant provision and if necessary with the help of the interpretation made by the courts, to know which acts or omissions will make him criminally liable (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 162).
- 57 In the third place, the principle of non-retroactivity of the criminal law means in particular that a court cannot, in the course of criminal proceedings, impose a criminal penalty for conduct which is not prohibited by a national rule adopted before the commission of the alleged offence or aggravate the rules on criminal liability of those against whom such proceedings are brought (see, by analogy, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 62 to 64 and the case-law cited).

- 58 As noted in paragraph 45 above, the requirements of foreseeability, precision and non-retroactivity inherent in the principle that offences and penalties must be defined by law apply also, in the Italian legal system, to the limitation rules for criminal offences relating to VAT.
- 59 It follows, first, that it is for the national court to ascertain whether the finding, required by paragraph 58 of the *Taricco* judgment, that the provisions of the Criminal Code at issue prevent the imposition of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the Union leads to a situation of uncertainty in the Italian legal system as regards the determination of the applicable limitation rules, which would be in breach of the principle that the applicable law must be precise. If that is indeed the case, the national court is not obliged to disapply the provisions of the Criminal Code at issue.
- 60 Second, the requirements mentioned in paragraph 58 above preclude the national court, in proceedings concerning persons accused of committing VAT infringements before the delivery of the *Taricco* judgment, from disapplying the provisions of the Criminal Code at issue. The Court has already pointed out in paragraph 53 of that judgment that, if those provisions were disappplied, penalties might be imposed on those persons which, in all likelihood, would not have been imposed if those provisions had been applied. Those persons could thus be made subject, retroactively, to conditions of criminal liability that were stricter than those in force at the time the infringement was committed.
- 61 If the national court were thus to come to the view that the obligation to disapply the provisions of the Criminal Code at issue conflicts with the principle that offences and penalties must be defined by law, it would not be obliged to comply with that obligation, even if compliance with the obligation allowed a national situation incompatible with EU law to be remedied (see, by analogy, judgment of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraphs 58 and 59). It will then be for the national legislature to take the necessary measures, as stated in paragraphs 41 and 42 above.
- 62 Having regard to the above considerations, the answer to Questions 1 and 2 is that Article 325(1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to VAT, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the Union, or which lay down shorter limitation periods for cases of serious fraud affecting those interests than for those affecting the financial interests of the Member State concerned, unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter than those in force at the time the infringement was committed.

### **Question 3**

- 63 In view of the answer to Questions 1 and 2, there is no need to answer Question 3.

### **Costs**

- 64 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:

**Article 325(1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to value added tax, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or which lay down shorter limitation periods for cases of serious fraud affecting those interests than for those affecting the financial interests of the Member State concerned, unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter than those in force at the time the infringement was committed.**

[Signatures]