



Press and Information

Court of Justice of the European Union
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Judgment in Case C-105/14
Ivo Taricco and Others

By preventing, in cases of serious fraud in relation to VAT, the imposition of effective and dissuasive penalties because the overall limitation period is too brief, Italian law is liable to affect the financial interests of the European Union

In such a case, the Italian court must if need be disapply the overall limitation system in question

Criminal proceedings have been brought in Italy against Mr Ivo Taricco and other individuals charged with having formed and organised, between 2005 and 2009, a criminal conspiracy in which they put in place fraudulent 'VAT carousel' legal arrangements. Through the use of shell companies and false documents, they are alleged to have acquired bottles of champagne VAT free. This allowed the company 'Planet' to procure those bottles at costs below the market price, thereby distorting the market.

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 the shell companies in its accounts, wrongly deducting the VAT recorded in each of them, and, consequently, submitted fraudulent annual VAT returns.

Some of the charges against Mr Taricco and other individuals are time-barred, whereas the other charges will be time-barred by 8 February 2018 at the latest, before a final judgment can be delivered, due to the complexity of the investigation and the duration of the procedure. In Italy, such a situation is not unusual because of the structure of Italian law, which at the material time, allowed an extension of the limitation period by only a quarter of its duration (namely between seven and eight years in the present case, a period insufficient to obtain a final judgment on appeal). Mr Taricco and the other individuals suspected of committing VAT evasion amounting to several million euros may therefore enjoy de facto impunity as a result of the expiration of the limitation period.

The case has come before the Tribunale di Cuneo (District Court, Cuneo, Italy), which wonders whether Italian law, by effectively granting impunity to persons and undertakings which commit criminal offences, has created a new VAT exemption which is not provided for by EU law. It seeks clarification in that regard from the Court of Justice.

By its judgment delivered today, the Court points out, first of all, that under Article 325 of the Treaty on the Functioning of the European Union (TFEU), the Member States must counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own financial interests. The Court also notes that the European Union's budget is financed, inter alia, by revenue from the application of a uniform rate to the harmonised VAT assessment bases, with the result that there is a direct link between the collection of that revenue and the financial interests of the European Union.

In view of the foregoing, **the Italian court must determine whether the Italian law at issue allows the effective and dissuasive penalisation of cases of serious fraud affecting the financial interests of the European Union.** Thus, the Italian law would be contrary to Article 325

TFEU if the Italian court were to conclude that, in a considerable number of cases, the commission of serious fraud would escape criminal punishment because the rules on limitation periods generally prevent the imposition of final judicial decisions. Likewise, the Italian law would be contrary to Article 325 TFEU if it provided for longer limitation periods in respect of cases of fraud affecting Italy's financial interests than in respect of those affecting the financial interests of the European Union. That seems to be the case, since 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 Court notes that, if the national court concludes that Article 325 is infringed, it must then ensure that EU law is given full effect, **if need be by disapplying the rules on limitation periods in question**. Article 325 TFEU has the effect, in accordance with the principle of the precedence of EU law, of rendering automatically inapplicable, merely by entering into force, any conflicting provision of national law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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