JUDGMENT NO 111 YEAR 2024

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in the proceedings concerning the constitutionality of:

- Article 37 of Decree-Law No 21 of 21 March 2022 (Urgent measures to counter the economic and humanitarian effects of the Ukrainian crisis), converted with amendments into Law No 51 of 20 May 2022, as amended by Article 55 of Decree-Law No 50 of 17 May 2022 (Urgent measures on national energy policies, business productivity and investment attraction, as well as on social policies and the Ukrainian crisis), converted with amendments into Law No 91 of 15 July 2022, initiated by the First Instance Tax Court (*Corte di giustizia tributaria di primo grado*) of Rome (Section 27) with five referral orders dated 27 June 2023, registered as Nos 142, 144, 145, 146 and 147 in the 2023 Register of Referral Orders; and

- Article 37 of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted into law and subsequently amended by Article 1(120) of Law No 197 of 29 December 2022 (State budget for the 2023 financial year and multi-year budget for the 2023-2025 period), initiated by the First Instance Tax Court (*Corte di giustizia tributaria di primo grado*) of Milan (Section 12) with three referral orders dated 4 December 2023, registered as Nos 3, 4 and 5 in the 2024 Register of Referral Orders;

which said referral orders were published in the *Official Journal of the Italian Republic*, first special series, Nos 44, 45 and 46 of 2023 as regards the first five and No 5 of 2024 as regards the other three.

Having regard to the entries of appearance filed by Engycalor Energia Calore srl, Kuwait Petroleum Italia spa, Eni spa, Eni Global Energy Markets spa, Esso Italiana srl, Meltemi Energia srl, San Gregorio Wind srl and Engie Italia spa, as well as to the interventions filed by Assorisorse – Risorse naturali ed energie sostenibili and by the President of the Council of Ministers;

after hearing Judge Rapporteur Luca Antonini at the public hearing of 10 April 2024;

after hearing Counsel Massimo Luciani for Assorisorse – Risorse naturali ed energie sostenibili, Counsels Livia Salvini and Davide De Girolamo for Engycalor Energia Calore srl, Kuwait Petroleum Italia spa, Eni spa, Eni Global Energy Markets spa, Esso Italiana srl, Meltemi Energia srl, San Gregorio Wind srl and Engie Italia spa, and State Counsels Salvatore Faraci, Roberta Guizzi and Mattia Cherubini for the President of the Council of Ministers;

after deliberation in chambers on 4 June 2024.

[omitted]

Conclusions on points of law

1.– By five referral orders of 27 June 2023 (registered as Nos 142, 144, 145, 146 and 147 in the 2023 Register of Referral Orders), substantially identical in content, the First Instance Tax Court of Rome (Section 27) (hereinafter the Rome FITC) raised questions as to the constitutionality of Article 37 of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted by parliament, with reference to Articles 3, 23, 41, 42, 53 and 117 of the Constitution.

After outlining the specifics of the case that the proceedings concern, in its referral orders the Rome FITC goes on to set out the claims of unconstitutionality raised by the parties in the main proceedings before it and concludes by expressly stating that it considers "the question as to the constitutionality of the aforesaid provision in relation to the aspects raised by the applicants to be relevant, given that Article 37 of Decree-Law No 21/2022 precludes the requested refund, and not to be manifestly unfounded".

1.1– In particular, the Rome FITC considers the question as to the constitutionality of Article 37 of Decree-Law No 21/2022, as converted into law and subsequently amended, due to alleged infringement of Articles 3, 23 and 53 of the Constitution not to be manifestly unfounded.

The referral orders complain, first of all, that the legislation only identifies the taxable persons and the calculation criteria (taxable base and rate), omitting to set out the purpose of the tax, contrary to the constitutional duty to establish at least the essential identifying elements of tax obligations.

Moreover, according to the Rome FITC, even if one were to maintain that the purpose of the extraordinary contribution was to tax the "surplus profits" accrued by energy undertakings, the way that the levy is actually designed makes it wholly unsuited to attaining that purpose.

The differential increase in VAT balances focuses on a taxable element that is not apt per se to capture "surplus profit" margins, because it does not allow for considering costs that significantly affect profits, such as management charges, depreciation and differentials realised on derivative contracts.

Moreover, since the extraordinary contribution is applied to entire turnover, transactions outside the energy sphere (such as, in particular, M&A transactions) also allegedly count towards establishing the taxable base. In addition, excise duties are also included, even though they are not included in the notion of profit in an economic or fiscal sense.

The Rome FITC further alleges that time period taken as a reference for calculating the differential increase in the VAT balance, which constitutes the taxable base of the extraordinary contribution, is also unsuited to identifying any "surplus profits" made by the undertakings, both because the period is too short and because in 2020-2021 the undertakings were loss-making due to the restrictions caused by the COVID-19 epidemiological emergency. Therefore, the increase that counts towards the taxable base of the extraordinary contribution does not amount to "surplus profits" if compared to the "ordinary profits" achieved in the previous period.

It is further argued that the challenged provision is also contrary to Article 3 of the Constitution on the ground that it infringes the principle of equality, given the discriminatory nature of the extraordinary contribution, both externally (because of unequal treatment between undertakings in the energy sector and the rest of the taxpayers

operating in other product sectors) and internally (because the extraordinary contribution is borne only by some of the undertakings operating in the energy sector).

Lastly, the referral orders allege that the challenged provision is contrary to Articles 42 and 53 of the Constitution and Article 117 of the Constitution, in conjunction with Article 1 of Protocol No 1 to the European Convention on Human Rights (ECHR), insofar as the extraordinary contribution payable by the applicant companies significantly erodes their assets, with expropriatory effects, unjustifiably sacrificing their right to property. In that regard, the referral orders cite the case law of the European Court of Human Rights (ECtHR) to argue that the levy must not excessively reduce the companies' net assets.

1.2– The referral orders registered as Nos 144, 145 and 147 in the 2023 Register of Referral Orders also allege that Article 37(8) of Decree-Law No 21/2022, as converted by parliament and subsequently amended, infringes Articles 3, 53, 41 and 117(2)(e) of the Constitution on two grounds. First, in outlawing the passing on of the extraordinary contribution to consumer prices, the provision is unreasonable because it does not lay down a mechanism to give effect to that prohibition. Second, the prohibition concerns only "consumer prices", with the result that undertakings located upstream in the production process and having other businesses as customers remain outside the scope of that prohibition thereby leading to a distortion of competition.

1.3.– All of the proceedings have seen the private parties enter appearances (respectively: Engycalor Energia Calore srl, in the proceedings docketed as 142/2023 Register of Referral Orders; Kuwait Petroleum Italia spa, in the proceedings docketed as 144/2023 Register of Referral Orders; Eni spa, in the proceedings docketed as 145/2023 Register of Referral Orders; Eni Global Energy Markets spa, in the proceedings docketed as 146/2023 Register of Referral Orders; Esso Italiana srl, in the proceedings docketed as 147/2023 Register of Referral Orders), by filing entries of appearance the content of which are substantially the same.

1.4.– The President of the Council of Ministers, represented and defended by State Counsel, has intervened in all of the proceedings by filing interventions the contents of which are identical and arguing against the issues raised by the referring court.

1.5.– In the proceedings, both the companies that are parties to the main proceedings and State Counsel have filed pleadings. Amici curiae briefs have also been filed pursuant to Article 6 of the Rules of Procedure of the Constitutional Court.

1.6.– In the proceedings docketed as 145/2023 Register of Referral Orders, Assorisorse – Risorse naturali ed energie sostenibili also intervened, by intervention filed on 28 November 2023.

2.– By three referral orders of 4 December 2023 (respectively registered as Nos 3, 4 and 5 in the 2024 Register of Referral Orders), of identical content, the First Instance Tax Court of Milan (Section 12) (hereinafter the Milan FITC), raised questions as to the constitutionality of Article 37 of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted by parliament, subsequently amended by Article 1(120) of Law No 197/2022, with reference to Articles 3, 23, 42, 53 and 117 of the Constitution.

2.1.– The referring court, similarly to what is set out in the referral orders of the Rome FITC, likewise complains that the legislation fails to identify the precondition for the extraordinary contribution, thereby infringing Article 23 of the Constitution, as well

as Articles 3 and 53 of the Constitution for failure to incorporate a suitable index of the ability to pay the tax.

Additionally, the Milan FITC states that, even if it were to be held that the purpose of the extraordinary contribution lies in targeting unjustified "surplus profits", the structure of the tax, based on the differential increases in the balances reported in the periodic VAT returns (*liquidazioni IVA periodiche* – LIPE) for the two periods compared, does not allow that purpose to be achieved, giving rise to a further infringement of Articles 3 and 53 of the Constitution because the result of these balances are not such as to identify an increase in windfall profits due to speculation.

The reference to the structure of VAT does not allow for a correlation to be drawn between revenues and costs, meaning that expenditure for the purchase of capital goods, personnel costs or those relating to "differentials realised on derivative contracts" are not taken into account.

Moreover, since the extraordinary contribution is based on turnover for VAT purposes, the amount thereof depends on elements like excise duties that "cannot in any way equate to a significant increase in taxable 'wealth'".

The time periods taken by way of reference are also allegedly ill-suited to achieving the legislation's purpose. First, because they are too short and, secondly, because they are not significant. In particular, it is pointed out that the initial period was characterised by a sharp drop in sales due to the emergency provisions resulting from the spread of COVID-19, so that it had been an abnormal market situation that could not be compared with the subsequent period in which normal conditions were restored.

It is further alleged that the principle of equality under Article 3 of the Constitution is infringed, both in terms of unequal treatment within the energy market and outside it.

It is also claimed that there is a breach of Articles 42, 53 and 117 of the Constitution, the latter in conjunction with Article 1 of Protocol No 1 ECHR, since the extraordinary contribution has confiscatory and expropriatory effects on the assets of the companies concerned.

Finally, the Milan FITC complains that the provision contained in Article 37(3-*ter*) of Decree-Law No 21/2022, as converted into law and amended several times, violates Articles 3 and 53 of the Constitution on the ground that it infringes the principle of reasonableness because it is at odds with the structure of VAT, which does not allow for a correlation to be drawn between revenues and costs. Moreover, that exclusion operates only if, in a completely random manner, the related "linked purchases" (*acquisti afferenti*) were made within the time periods referred to by the challenged provision.

3.– At the outset the various proceedings must be joined since they concern the same provision and are based on essentially the same arguments and constitutional provisions (among many, see Judgments Nos 128/2023, 91/2023, 246/2022 and 256/2010 as well as Order No 153/2023).

3.1.– It is reiterated that the intervention of Assorisorse – Risorse naturali ed energie sostenibili is inadmissible for the reasons set forth in the order read out at the hearing of 10 April 2024 attached hereto.

4.– In all of the proceedings, State Counsel objects that the questions are inadmissible on the ground of failure to reconstruct the relevant regulatory framework,

alleging that the referring courts, both in Rome and Milan, have not taken into account the amendments made by Article 1(120) of Law No 197/2022 to Article 37 of Decree-Law No 21/2022, as converted into law and amended.

4.1.– The objection can be sustained solely in relation to the five Rome FITC referral orders.

This Court has ruled on several occasions that referral orders must take into account national legislative developments because failure to do so leads to flawed reasoning as to why the question raised is not manifestly unfounded and the ensuing inadmissibility of the question (see*,* in particular, Judgments Nos 256/2022, 225/2022 and 36/2022).

In the present case, the five Rome FITC referral orders issued on 27 June 2023 do not take into account the significant amendments made to Article 37 of Decree-Law No 21/2022 by Article 1(120) of Law No 197/2022, which entered into force on 1 January 2023, therefore on a date prior to that on which the referral orders were filed.

In particular, in paragraph 1, after the second sentence, it was added that the "contribution is due if at least 75% of the turnover for the year 2021 derives from the activities indicated in the preceding sentences". In paragraph 2, second sentence, the words "31 March 2021" were replaced by the words "30 April 2021". After paragraph 3, the following was inserted: "3-*bis*. Transactions involving the sale and purchase of shares, bonds or other securities not constituting goods and company shares between the persons referred to in paragraph 1 shall not count towards the total of the sales and purchase transactions referred to in paragraph 3. 3-*ter*. Sales transactions that are not subject to VAT because they do not meet the territorial requirement pursuant to Articles 7 to *7-septies* of Decree of the President of the Republic No 633 of 26 October 1972 shall not count towards the total of sales transactions referred to in paragraph 3, if and to the extent that the purchases linked thereto are not territorially relevant for VAT purposes".

These are changes that, in essence, by revisiting the issues of taxable person for the purposes of the extraordinary contribution and the taxable base, affect all of the objections raised in the Rome FITC referral orders.

Therefore, the referring court should have addressed those changes in order to assess whether and to what extent they had affected the reasoning underpinning the various aspects complained about. Reasoning that has remained centred on only a partial overview of the challenged legislation and as such lacking its full meaning.

It follows that the questions raised by the five Rome FITC referral orders registered as Nos 142, 144, 145, 146 and 147 in the 2023 Register Referral Orders are inadmissible.

4.2.– The same conclusion cannot be drawn in relation to the three Milan FITC referral orders, and thus the objection must be dismissed in that respect.

The content of the orders shows that the referring court, in its reconstruction of the relevant regulatory framework, also takes well into account the subsequent amendments to the challenged provision. And it is on the basis of that complete overview that the Milan FITC has explained why the questions are not manifestly unfounded.

Indeed, in addition to setting out complaints about Article 37(3-*ter*) of Decree-Law No 21/2022, introduced precisely by Article 1(120) of Law No 197/2022, the three Milan FITC referral orders show that they have taken the relevant regulatory framework into

account also as regards other amendments and have included them within the scope of the grievances raised.

4.3.– Therefore, this Court must devote its attention solely to the issues raised by the three Milan FITC referral orders, and it is from that standpoint that State Counsel's further allegations of inadmissibility must be examined.

4.3.1.– First and foremost, State Counsel objects that the questions are inadmissible on the ground of failure to state reasons since the referring court has incorporated by reference the content of the parties' statements of defence.

The objection cannot be sustained.

Although retracing the parties' arguments, the Milan FITC referral orders specify in detail why the questions are not manifestly unfounded and adopt those grounds as their own. In line with this Court's well-established case law, that is sufficient to hold that the questions raised are admissible (among many, Judgments Nos 214/2019, 121/2019, 88/2018 and 35/2017).

4.3.2.– A further objection of inadmissibility has been raised by State Counsel, pointing out that the referral orders lack an operative part and hence an indication of the provisions whose constitutionality is challenged and the specific constitutional provisions that they allegedly infringe.

The objection cannot be sustained.

This Court has clarified that "referral orders raising questions of constitutionality do not have to end with an operative part that also contains a request, it being sufficient that the content and thrust of the complaints emerge clearly from the overall language of the grounds" (Judgment No 136/2022).

In the present case, an examination of the content of the grounds set out in the referral orders at issue clearly makes it possible to identify the challenged provisions, the constitutional provisions and the thrust of the objections, enabling this Court to understand and assess the terms of the questions raised.

4.3.3.– State Counsel also objects that the questions are inadmissible on the grounds that the relevant elements of the "underlying proceedings", "of which no aspect is mentioned", have been omitted.

The objection cannot be sustained. All of the referral orders specify that the proceedings before the tax court have been brought by companies that appealed against the implicit rejection of their applications to be refunded the sums that they had paid by way of extraordinary contribution.

Therefore, the relevant fact has been sufficiently outlined by the referring court, which makes it plausible that the companies are part of the energy market and hence subject to the extraordinary contribution whose refund they have sought (among many, Judgments Nos 249/2022, 197/2022 and 109/2022).

5.– Before examining the merits of the case, it must be noted that Decree-Law No 21/2022, where the challenged provisions are to be found, was enacted in the context of an exceptional situation, characterised by the outbreak of the serious international crisis and caused by the Russian invasion of Ukraine, as a result of which Russia progressively decreased its natural gas supplies to the European Union.

The context was well described in the Bank of Italy's annual report, highlighting that "Russia's invasion of Ukraine marked a turning point in international relations and has greatly affected global growth, inflation and world trade [...] There have been exceptional rises in energy prices, contributing to a sharp and widespread increase in inflation, matched by a rapid tightening of monetary policies in almost all the major advanced economies, and global growth has slowed at a time of great economic and political uncertainty. Government authorities, especially in advanced countries, have intervened in support of households and firms in order to mitigate the impact of the energy crisis [...]. From August 2021 to the same month of 2022, gas prices rose more than seven times in Europe, which is heavily dependent on supplies from Russia" (Bank of Italy, Annual Report, Year 2022, Rome, 31 May 2023).

Indeed, all EU Member States experienced a surge in electricity prices linked to rising gas prices, "leading to gas becoming the marginal price setting fuel ahead of coal". Against that background, not only "electricity generating companies" but "also the fossil fuel sector" benefitted from "extreme price increases due to the current market situation, generating profits that go beyond the result of usual business activities" (European Commission, Proposal for a Council Regulation on emergency action to address high energy prices, 14 September 2022, followed by Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices).

The disruption of the energy market therefore created a serious crisis situation that required the adoption of urgent measures to address the "unbearable effects on consumers and companies" (Recital 8 of Council Regulation (EU) 2022/1854).

5.1.– It is thus in this context that Decree-Law No 21/2022 introduced a detailed series of urgent measures to counter the economic and social effects of the crisis at the domestic level, which operated on many fronts: from supporting manufacturing to containing energy prices on the Italian market and to aiding households. These include: a reduction in excise duty rates on petrol and diesel used as fuel (Article 1); a fuel bonus (Article 2); a tax credit granted to businesses for the purchase of electricity and natural gas (Articles 3 and 4); an increase in tax credits for electricity-intensive and gas-intensive businesses (Article 5); a social bonus for electricity and gas (Article 6); and an instalment plan for energy bills (Article 8).

5.2.– The "extraordinary solidarity contribution levy" for the year 2022, referred to in Article 37(1), was established to finance the emergency measures, aimed at "containing for businesses and consumers the effects of the increase in prices and tariffs in the energy sector".

In fact, Article 38(2)(a) specified that the costs arising from the application of the aforementioned regulatory provisions shall be funded "in the amount of € 3,977,525,207 for the year 2022 through using the higher revenues deriving from Article 37".

6.– Having reconstructed in these terms the background to the challenged provision, it is now necessary to clarify its regulatory scope.

Paragraph 1 of Article 37 placed the burden of paying the "extraordinary solidarity contribution levy" on, respectively, "persons who carry on in the territory of the State, for the subsequent resale of goods, the business of producing electricity, persons who carry on the business of producing methane gas or extracting natural gas, persons who resell electricity, methane gas and natural gas, and persons who carry on the business of

producing, distributing and trading in petroleum products". It went on to specify that the "contribution is also payable by persons who, for subsequent resale, permanently import electricity, natural gas or methane gas and petroleum products, or who introduce into the territory of the State such goods coming from other States of the European Union".

In essence, therefore, taxable persons include both those who produce energy products and those who purchase them for resale purposes. Energy products have been defined as electricity, methane gas, natural gas and petroleum products.

The number of persons liable for payment of the contribution was then reduced by Article 1(120)(a) of Decree-Law No 197/2022, stipulating that "[t]he contribution is due if at least 75% of the turnover for the year 2021 derives from the activities indicated in the preceding sentences".

Paragraph 2 of Article 37 clarified the taxable base by identifying it as the "increase in the balance between sales and purchase transactions in the period from 1 October 2021 to 30 April 2022, compared to the balance in the period from 1 October 2020 to 30 April 2021". This because the deadline initially set for 31 March was postponed by Article 55 of Decree-Law No 50/2022, as converted into law.

The tax rate, initially set at 10%, was raised to 25% by the aforementioned Article 55. It was also provided that the contribution would only be due in cases of an increase of more than € 5,000,000 and not be due for an increase of less than 10%.

The subsequent paragraph 3 of the challenged Article 37 specified as follows: "[f]or the purposes of calculating the balance referred to in paragraph 2, the total amount of sales transactions, net of VAT, shall be taken into account along with the total amount of purchase transactions, net of VAT, indicated in the periodic VAT returns filed pursuant to Article 21-*bis* of Decree-Law No 78 of 31 May 2010, converted with amendments into Law No 122 of 30 July 2010, for the periods indicated in paragraph 2".

Article 1(120)(c) of Law No 197/2022, moreover, by introducing paragraph 3-*bis* to the challenged Article 37, provided that transactions involving the sale and purchase of shares, bonds or other securities not constituting goods and company shares between the persons referred to in paragraph 1 of the same Article 37 were not to count towards calculating the totals of the sale and purchase transactions.

In this way, the law has established that sales and purchase transactions that have no connection with increases in commodity prices and, as such, obviously represent completely irrelevant transactions for the purposes of the economic strength stemming from the increase in energy prices, do not count towards constituting the taxable base.

Article 1(120)(c) of Law No 197/2022 also provided as follows: "3-*ter*. Sales transactions that are not subject to VAT because they do not meet the territorial requirement pursuant to Articles 7 to *7-septies* of Decree of the President of the Republic No 633 of 26 October 1972 shall not count towards the total of sales transactions referred to in paragraph 3, if and to the extent that the purchases linked thereto are not territorially relevant for VAT purposes".

6.1.– An examination of the legislation reveals, first of all, the nature of the extraordinary solidarity contribution.

It should be recalled that this Court's well-established case law considers the *nomen iuris* used by parliament to be irrelevant: "it is necessary to ascertain in concrete terms

and on a case-by-case basis whether or not a tax is involved" (among many, Judgments Nos 149/2021, 58/2015 and 141/2009).

Despite its formal label, the levy established by Article 37 is in essence of a fiscal nature – which, moreover, is not called into question by the referring court, by the parties themselves or by State Counsel – inasmuch as it takes the form of a compulsory levy that definitively reduces taxpayers' assets, does not modify a synallagmatic relationship, and the revenues raised – linked to a specific index of ability to pay the tax – are aimed on a teleological level at contributing to public expenditure (in these terms, among many, Judgments Nos 64/2024, 108/2023 and 128/2022).

7.– Following on from the above, it is now possible to consider the merits of the first question, which challenges Article 37 of Decree-Law No 21/2022, as converted by parliament and amended several times, on the ground that the legislation does not identify the precondition for the extraordinary contribution, thereby infringing both the principle of the legality of taxation under Article 23 of the Constitution and Articles 3 and 53 of the Constitution for failure to identify a suitable index of ability-to-pay.

7.1.– As to the alleged infringement of Article 23 of the Constitution, the question is unfounded.

7.1.1.– Contrary to what the referring court maintains, the basis of that tax is not the so-called "surplus profits" or windfall profits, to which neither the challenged provisions nor the heading of Article 37 ever refer.

Sporadic allusions to that notion are indeed to be found in the preparatory works and in the accompanying reports to the decree-law and to the subsequent statute into which it has been converted. However, they are made in an entirely non-technical sense, simply to signify that, as noted by State Counsel, the historical rationale of the regulatory measures lies in the intention to target, with an extraordinary levy, the trade in energy products of those businesses that, compared to the generality of the other businesses operating in the market, were – on the basis of *id quod plerumque accidit* – benefitting from an "anti-cyclical" trend.

It can be inferred from the provisions that the precondition for the tax is identified – by virtue of paragraph 1 defining the taxable persons, paragraph 2 defining the taxable base and paragraph 3 laying down the method of calculation – with a differential increase in a balance stemming from the sale, under certain conditions, of energy products by certain undertakings operating in the energy sector in a particular time span.

The taxable base, corresponds to the increase, over and above an absolute threshold and fixed percentage, of the balance between sale and purchase transactions, net of VAT, carried out in the time periods taken as a reference and as such recorded in periodic VAT returns, prepared and submitted pursuant to Article 21-*bis* of Decree-Law No 78 of 31 May 2010 (Urgent measures on financial stabilisation and economic competitiveness), converted by parliament, with amendments, into Law No 122 of 30 July 2010.

The question concerning the alleged infringement of the principle of the legality of taxation under Article 23 of the Constitution must therefore be considered unfounded.

7.1.2.– Before addressing the merits of the complaints relating to the arbitrariness of the index of ability-to-pay, it is necessary to reiterate that, according to this Court, "within a complex context such as the prevailing one, where new and variegated forms

of value creation are being developed, the concept of capacity to pay tax does not necessarily have to be tied only to traditional indicators such as assets and income. Indeed, other and more evolved forms of capacity, which may indeed indicate economic force or potential, may also be taken into account" (Judgment No 288/2019).

This conclusion of constitutional case law does not contradict the meaning of the principle of ability-to-pay. On the contrary, it confirms it in its original meaning and also adapts it, from the perspective of the equality and solidarity inherent in the mandatory duty to contribute to public expenditure, to the modern evolution of economic dynamics in a context in which wealth can escape more traditional ways of identifying it.

In fact, the principle of ability-to-pay, as understood in those terms, has been able to capture new forms of wealth. It has led, for example, to consider it not "therefore implausible for the legislator, in the context of a period of crisis, to have inferred … from involvement in the financial market", a specific and self-standing capacity to pay tax, relevant as a temporary measure to counter the adverse economic climate, given the "oligopolistic features" of that market, from which it follows "that the undertakings operating on it have significant market power, which results also from a certain level of demand inelasticity (although this varies for the different services and sectors)" (Judgment No 288/2019).

In the same vein, Judgment No 10/2015 held that it was not per se unconstitutional that a tax – later found to be unconstitutional in another respect – could pursue the purpose of targeting an index of ability-to-pay detected in the "exceptional profitability of the economic operations of petroleum operators" recorded in "complex unfavourable economic circumstances".

7.1.3.– In the light of the foregoing, assessing whether there is an adequate index of ability-to-pay in relation to the challenged levy cannot be done on the basis – as the referring court advocates – of a merely atomistic consideration of the increase in the balance referred to in Article 37(3) chosen by the legislature for the purpose of determining the taxable base.

Other factors must be considered that, assessed overall and as a whole, contributed to the selection of the concrete economic strength underlying the basis of the extraordinary contribution: on the one hand, the economic situation at the time, characterised by an extreme surge in energy prices in the period taken as a reference for the tax; on the other hand, the distinctiveness of the energy products market, with its oligopolistic features and characterised by a "wholly inelastic" demand (Judgment No 10/2015).

From this standpoint, it is undeniable that a particular economic strength, additional to that which can be recorded under normal circumstances, has potentially come to be wielded by the energy undertakings that have benefited from this situation.

It is precisely this greater economic strength that underpinned, albeit in a different taxation logic, the need for the introduction of a tax on the "surplus profits" of energy undertakings, aimed at hitting so-called windfall profits achieved in the years 2022 and/or 2023, under the previously mentioned Council Regulation (EU) 2022/1854 issued a few months after the entry into force of Article 37 challenged here.

In addition, the Parliamentary Budget Office highlighted that the trend in aggregate e-invoicing data relating to undertakings operating in the energy sector in a broad sense

was, from October 2021 to April 2022 (i.e. precisely in the period of application of the levy at issue) far higher than the average trend recorded in all other economic sectors. More specifically, compared to an increase of 383.4% in the energy sector (the highest in absolute terms), the increase was 77.7% in the food industry and 11.9% in agriculture, while there was a decrease of 1.7% in the transport sector (as can be inferred from the hearing of the President of the Parliamentary Budget Office in the context of the examination of Bill C. 3614, converting Decree-Law No 50/2022 into a statute, held jointly by Budget Commission (V) and Finance Commission (VI) of the Chamber of Deputies on 30 May 2022).

In conclusion, in this context, it does not appear arbitrary that the very sharp rise in energy product prices in the exceptional economic situation and the specific market in which energy undertakings operate has been identified by the legislature – provided a number of conditions are met – as an index revealing wealth (among many, Judgment No 108/2023).

Indeed, the legislature "enjoys a wide discretion in relation to the various purposes that inform taxation, being allowed, 'albeit with the limit of non-arbitrariness, to determine the individual facts expressive of the ability to pay tax and the taxpayers eligibility for the tax obligation, may be inferred from any index revealing wealth' (among many, Judgment No 111/1997)" (among many, Judgment No 201/2020).

Hence, in this respect, the question raised with reference to Articles 3 and 53 of the Constitution on the grounds of the alleged arbitrariness of the index of ability-to-pay identified by the legislature is unfounded.

8.– If the aim pursued by the legislature appears constitutional, this Court's review must now go on to assess whether the means provided are proportionate to it, as required by the further question that the referring court, with regard to the structure of the tax, raises with reference to Articles 3 and 53 of the Constitution. It is therefore a matter of assessing, once it has been ascertained that the index of ability-to-pay is not arbitrary, whether the tax connected with it is actually structured in such a way as to justify, also on this level, "individual eligibility to pay the tax" (among many, Judgment No 155/2001). This implies checking for the existence of a relationship of rational connection and proportionality between the means devised by the legislature and the aim that it is intended to pursue.

8.1.– From this perspective, the criticisms that the referring court makes of the failure to provide for the deduction of costs, such as those for personnel or those relating to "differentials realised on derivative contracts", do not appear well founded insofar as they assume – fallaciously – that the prerequisite for the solidarity contribution is profits made.

However, there still remain the complaints voiced again with reference to Articles 3 and 53 of the Constitution, irrespective of having established the precondition for the tax, which focus on the manner in which the legislature chose to identify the greater wealth to be subjected to taxation.

In fact, the tax is structured by taking, as noted by State Counsel, a marginal accounting quantity as the taxable base, consisting of the increase witnessed in the reference period, compared to the corresponding period of the previous year, in the

balance between the total value of the sales and purchase transactions recorded in the relevant periodic VAT returns.

From the legislature's perspective, it is therefore the upward variation in the 'delta' between the above-mentioned sales and purchase transactions that is indicative of a "speculative" increase in the selling prices of energy products and thus of the greater economic strength of the undertakings operating in that particular sector.

This Court is therefore called upon to assess whether the choice of relying on the data contained in the periodic VAT returns discloses a rational connection, apt to capture the greater economic strength identified by the legislature as an index of ability-to-pay.

Indeed, in order to ensure that "the sacrifice caused to the principles of equality and capacity to pay tax is not disproportionate and that the different level of taxation does not degenerate into arbitrary discrimination", the structure of the tax must be "consistently related to the relevant justification" therefor (Judgment No 10/2015).

8.2.– In this regard, it should first be pointed out that, as a general rule, for taxes that target windfall profits, it would certainly be more natural to refer to the revenue recorded for corporate income tax (*imposta sui redditi delle società* – IRES) purposes, since greater wealth is more easily equatable with surplus profits earned.

It is significant that for the extraordinary solidarity contribution subsequent to the one challenged here and provided for in paragraph 115 of Article 1 of Decree-Law No 197/2022, the taxable base was structured in paragraph 116 by referring to the increase in revenue for corporate income tax purposes in 2022 compared to the average earned in the preceding four years: "[t]he solidarity contribution shall be determined by charging a rate equal to 50% on the amount of the portion of the total income determined for corporate income tax purposes relating to the tax period prior to the one in course on 1 January 2023, which exceeds by at least 10% the average of the total income determined for corporate income tax purposes achieved in the four tax periods prior to the one in course on 1 January 2022".

On the contrary, using the rules of an indirect tax like VAT for the challenged levy does not ensure with the same degree of certainty that the greater wealth will be captured: an increase in turnover could, as surmised by the parties' legal counsel, stem from a mere increase in the quantities sold without being a significant indicator of having benefited from the economic advantage of price rises in the sector.

In other words, economically speaking, in a situation where there had been no growth in the trade margin over the two periods compared as required by the challenged provision even when there has been a fall rather than an increase, a tax reliant solely on VAT mechanisms could produce an increase in the relevant balance such as to trigger a significant tax liability.

It is true that the legislature has set an absolute threshold (€ 5 million) and a percentage threshold (10%) below which the tax does not apply.

However, this exclusion threshold – which, contrary to State Counsel's opinion, is not structured as an exemption – does not prevent imposition of the tax where there is a significant difference in the quantity of products sold in the second period compared to the first.

8.3.– These are elements of the structure of the tax that, in ordinary times, would not, in themselves – not even under the more modern conception of the ability-to-pay principle mentioned above (point 7.1.2.) – allow the test of rational connection and proportionality to be passed.

However, extraordinary circumstances come to the fore here that make the regulatory measure *sui generis*.

First, the crisis situation, which, had it not been "addressed rapidly", could have had "severe detrimental effects on inflation, on the liquidity of market operators and on the economy as a whole" (to cite the aforementioned Council Regulation (EU) 2022/1854).

Second, the circumstance that, in that particular context, the data deducible from the VAT balances obtainable from the periodic VAT returns were the only ones available and, therefore, the only ones that could have been considered by the legislature in order to promptly intervene to finance, with a new and temporary tax, the set of urgent measures, in support of households and businesses, provided for by Decree-Law No 21/2022, as converted by parliament and amended several times.

Precisely because of the urgency to act, the legislature provided in Article 37(5) that "[t]he contribution shall be calculated and paid [...] through an advance payment of 40% by 30 June 2022, with the balance due by 30 November 2022", thus within a few months of the entry into force of the provision.

In order to meet this timeframe, there was thus no possibility of referring to the more appropriate figures for revenue for corporate income tax purposes, because it would have been necessary, in order to capture the greater economic strength of the year 2022 (in which the first price surge occurred), to wait for companies to file their corporate accounts: the amount of profits could only have been recorded after the end of the then current tax year and thus in 2023.

Significantly, the different solidarity contribution established by the 2023 Budget Law, which is related to profits earned in 2022, provides for payment by June 2023.

Therefore, when the need to introduce an extraordinary measure to finance aid in favour of households and businesses was assessed in March 2022, periodic VAT returns were considered to be the only available and suitable instrument to identify the one-off increase in wealth accumulated by energy undertakings that was to serve as the basis for a solidarity contribution.

It is only by taking into account the entirely *sui generis* nature of the context in which the temporary tax measure was introduced that the instrument used by the legislature, i.e. net sales reported for VAT purposes, can exceptionally be considered not unreasonable, despite their objective degree of approximation in capturing the greater economic strength of the energy undertakings concerned.

8.4.– Having clarified this, it must at the same time be pointed out that the extraordinary nature of the moment in time and the temporary nature of the tax cannot be considered as affording *carte blanche* for the introduction of any form of taxation.

8.4.1.– This Court cannot but reiterate, that "per se [...] 'temporary status is not a sufficient argument in order to justify any given tax, which might otherwise depart from constitutional principles' (Judgment No 288/2019)" (Order No 165/2021).

It must now be made clear that the "necessary balancing of interests between the financial needs of the community and the protection of taxpayers' interests" (Judgment No 73/1996), to which, above all in the past, reference has often been made, cannot systematically be resolved in favour of the former. This is because even in tax matters and even when, at particular times, extraordinary and pre-eminent needs of the community are involved, this Court is in any event called upon to ensure in assessing the balance struck by the legislature that the latter has at least respected the essential threshold of not manifest unreasonableness, beyond which the tax obligation itself would end up losing its justification in terms of solidarity to become mere subjection to state power.

8.4.2.– From this standpoint, stipulating that the excise duties paid to the State and stated in the sales invoices are to be included in the taxable base of the extraordinary contribution exceeds that threshold of reasonableness. The relevant question is therefore well founded, for infringement of Articles 3 and 53 of the Constitution, in the terms set out below.

8.4.3.– The express reference (Article 37(3)), for the purposes of calculating the increase in the balance that constitutes the taxable base, to the total of sales and purchase transactions "net [only] of VAT" implies that the amount of excise duties paid to the State may also be included.

With regard to the latter form of indirect taxation, it should be noted that Article 2 of Legislative Decree No 504 of 26 October 1995 (Law consolidating the legislative provisions concerning taxes on production and consumption and related criminal and administrative sanctions) identifies its prerequisite in the manufacture or importation of specific products, which include, to the extent relevant here, energy products, i.e. mineral oils (petrol, unleaded petrol and fuel oils) as provided for in the subsequent Articles 21 to 26, and electricity, the specific rules on which are contained in Articles 52 to 60.

That same article draws a distinction between the chargeable event, i.e. manufacture, importation or irregular entry into the territory of the State, and chargeability, which occurs only at the time of release for consumption.

Taxation therefore presupposes, in principle, the placing of the product on the market, through actions (in particular, the removal of the product from the tax warehouse) that entail the possibility of passing on the excise duties to resellers or consumers.

Until the moment of release for consumption, in fact, excisable goods move from one tax warehouse to another, to a registered consignee, to a place of exportation from the EU or to a consignee exempt from excise duty (Article 6), under a duty suspension arrangement, and therefore without any obligation to pay the excise duty to the State.

When the products move under a duty suspension arrangement, the excise duty is not due since the relevant payment to the State will be made at the time of release for consumption, following their exit from the said arrangement.

8.4.4.– The peculiarity of the excise duties system – a tax that is therefore single-stage (*monofase*) – reflects on the reasonableness of the challenged provision and radically undermines it.

In fact, persons who purchase energy products for which excise duties have not yet been paid, because they move under a duty suspension arrangement, and who then proceed to release them for consumption, normally pass on the amount of the excise duties

that they have paid to the State to subsequent purchasers by including that amount in the sale price stated on the invoice.

For these persons, however, excise duties impact on the calculation of taxable base of the extraordinary contribution, since they too are included in the sale invoices accounted for in the periodic VAT return, even though they do not appear in the purchase invoices because those persons purchased under a duty suspension arrangement.

In other words, for these persons, the excise duties, which they themselves have paid to the State, increase, including considerably, the taxable base of the extraordinary solidarity contribution, without this increase being in any way representative of greater wealth.

Moreover, pursuant to Article 3(3) of Legislative Decree No 504/1995, excise duties are levied "by applying the tax rate to the quantity of product", so that they are entirely independent of the selling price. Therefore, even when the person liable for the extraordinary solidarity contribution had reduced the price of the products while at the same time improving sales, the impact of the excise duties would operate to increase the taxable base of the contribution itself even in the absence of any speculation.

In addition, the complex dynamics of the application of excise duties also leads to horizontal discrimination between those liable to pay the contribution. Only some of them will witness a distortive effect, i.e. those who pay the excise duty to the State and pass it on to purchasers by including it in their sales invoices, but not those within the supply chain who can dispose of the energy products under a duty suspension arrangement, for whom the excise duty is not relevant. And neither for those who trade after release for consumption, for whom the aforementioned effect does not occur since the excise duties – likely – will increase the price in both the sales and purchases invoices and hence substantially balance themselves out.

Finally, it should be considered that the tax dynamic of the extraordinary solidarity contribution also retroactively affected the economic calculations of undertakings, leading to tax consequences by that time.

In the presence of such distorting effects, this Court cannot accept State Counsel's argument that the inclusion of excise duties for the purposes of quantifying the increase in the balance merely corresponds to a legitimate increase in the taxable base of the tax, suited to growing its revenue in the same way as could have been done, more directly, by upping the rate of the tax itself.

Article 37(3) of Decree-Law No 21/2022, as converted by parliament and repeatedly amended, must therefore be declared unconstitutional on the ground that it infringes Articles 3 and 53 of the Constitution, insofar as it provides that "[f]or the purposes of calculating the balance referred to in paragraph 2, the total amount of sales transactions, net of VAT, shall be taken into account" instead of "[f]or the purposes of calculating the balance referred to in paragraph 2, the total amount of sales transactions, net of VAT and excise duties paid to the State and stated in the sales invoices, shall be taken into account".

9.– On the other hand, the question of discrimination between companies in the energy market and those operating in other product sectors, such as banking or pharmaceuticals, which, according to the referring court, made substantial "surplus profits" during and after the pandemic crisis, is unfounded.

This Court has constantly held that "any diversification of the tax regime, by economic area or by type of taxpayer, must be supported by adequate justification" (among many, Judgment No 49/2024).

In the described economic context, a suitable justification exists, because the energy market, as we have seen, recorded such absolute increases in turnover in the period covered by the challenged provision as to be clearly unparalleled.

In Judgment No 288/2019, this Court ruled out that adopting "as a prerequisite for taxation the status of the persons liable to pay the new tax as financial market operators" constituted unlawful qualitative discrimination between different types of income" and noted moreover that on other occasions it had already "ruled unfounded, due to the existence of objective justifications, challenges relating to taxes that were established only for certain taxpayers within a specific category. In Judgment No 201/2014, it held that the restriction to the 'financial sector' only of the class of taxpayers liable to the 'additional levy' on remuneration in the form of bonuses and stock options was not unjustified".

10.– Nor is the question raised with regard to internal discrimination in the energy market well founded.

In particular, the referring court points out that the provision contained in Article 37(2) of Decree-Law No 21/2022, as converted by parliament and amended several times, as regards the part thereof that excludes the application of the tax where the increase in the balance is less than € 5 million or 10%, is discriminatory insofar as it introduces "a different tax regime even though the situations are entirely comparable".

This argument is without merit. The provision, rather than representing a discriminating factor, serves to complement the tax regime introduced by the legislature, which set a threshold below which increases in the balance were deemed not to be indicative of greater economic strength because they were considered to be attributable to normal business activity.

This Court, in a case that was in some respects similar, stated that nor "is the option to refer to a predetermined revenue amount (fifty million euros) an unreasonable choice to delimit the addressee entrepreneurs who must pay the levy. [...] In the exercise of this broad ability to choose, the legislator has determined that the levy applies only to those entrepreneurs with revenue higher than a certain threshold amount; it is not unreasonable that the operating costs of the Authority responsible for the correct functioning of the market should fall upon companies characterized by a significant presence on the relevant markets and endowed with considerable influence on the flow of economic activity corresponding thereto" (Judgment No 269/2017).

11.– The question concerning Article 37 of Decree-Law No 21/2022, as converted by parliament and amended several times, raised with reference to Articles 42 and 53 of the Constitution and Article 117 of the Constitution, in conjunction with Article 1 of Protocol No 1 ECHR, is also unfounded.

According to the referring court, the tax in question, as configured, leads to the erosion of a significant part of the companies' net assets, thereby infringing Articles 42 and 53 of the Constitution and Article 1 of Protocol No 1 ECHR.

In this regard, it should be pointed out that this Court has already made it clear in the past that a "tax law, even retroactive, does not give rise to an expropriation of private property, but only to a pecuniary obligation towards the State or other public body" (Judgment No 9/1959; in the same vein, Judgment No 22/1965).

In more recent times, it has also reiterated that the fact that "expropriation does not fall within the scope of Article 53 of the Constitution (Judgments Nos 283/1993, 22/1965 and 9/1959) means that it is precisely Article 53 that is the correct perspective from which to scrutinise whether or not the legislature has made reasonable use of its discretionary powers in relation to taxation with the goal of verifying that the structure of the tax is consistent internally and that the scale of taxation is not arbitrary" (Judgment No 111/1997).

In our constitutional system the fact that Article 53 of the Constitution expressly enshrines the principle of ability-to-pay as a yardstick against which to judge the constitutionality of tax measures (unlike other systems such as Germany, where the *Grundgesetz* does not expressly contemplate such a principle) precludes any possibility of evoking the constitutional guarantee of the right to property by in some way stretching, from a conceptual point of view, its scope of application.

Not only is there no conflict with Article 42 of the Constitution but neither is there any with Article 1 of Protocol No 1 ECHR and its autonomous concept of possessions.

First of all, when it comes to the definition and implementation of policies on taxation, the ECtHR is wont to recognise a wide margin of appreciation for States: national authorities are considered to be "in principle better placed than the international judge" to decide what is in the interest of social justice (among many, ECtHR judgment of 24 June 2014, *Azienda Agricola Silverfunghi sas and others v. Italy*; a principle also reiterated in ECtHR judgment of 7 December 2023, *Waldner v. France*).

Moreover, even in the very special situation considered in ECtHR judgment of 14 May 2013, *N.K.M. v. Hungary* (as well as in the similar ECtHR judgment of 2 July 2013, *R.Sz. v. Hungary*), cited by the parties' legal counsel, that same Court, while maintaining that the autonomous concept of possessions considered in Article 1 of Protocol No 1 ECHR had been violated from the point of view of lack of proportionality, nevertheless reiterated that the mere fact that the tax rate is very high does not in itself give rise to a violation of that provision.

Specifically, the applicant had been subjected to a tax increase whereby the average tax rate on civil servants' severance pay was trebled to 98% about ten weeks before the termination of her employment, resulting in a substantial deprivation of income at a time when she was presumably experiencing considerable personal hardship. In *R.Sz. v. Hungary*, the applicant had been subject to the same tax, but it had been applied after she had left her job.

Clearly, these were extreme situations that could not be likened to those envisaged by the referring court with reference to the extraordinary contribution introduced by Article 37 of Decree-Law No 21/2022, as converted by parliament and amended several times. Situations that moreover appear, first, only to have been mentioned in abstract terms and, second, not explained in detail: in the proceedings referred to in the referral order registered under No 3/2024 Register of Referral Orders initiated by the Milan FITC, in support of their claim that the challenged provision had an expropriatory effect, the

parties that entered an appearance point to the profit of the year preceding the possibly relevant one consistent with the aforementioned arguments.

12.– Finally, the question concerning Article 37(3-*ter*) of Decree-Law No 21/2022, as converted by parliament and amended several times, raised with reference to Articles 3 and 53 of the Constitution, is unfounded.

The referring court, in particular, complains about the provision pursuant to which: "Sales transactions that are not subject to VAT because they do not meet the territorial requirement pursuant to Articles 7 to 7-*septies* of Decree of the President of the Republic No 633 of 26 October 1972 shall not count towards the total of sales transactions referred to in paragraph 3, if and to the extent that the purchases linked thereto are not territorially relevant for VAT purposes".

Under this provision, the exclusion of extraterritorial sales transactions from the taxable base is conditional on the non-territoriality of the corresponding purchase transactions.

According to the referring court, the provision is unreasonable because, first, the structure of VAT (and consequently that of the contribution at issue) does not allow a correlation to be drawn between sales and purchases. Second, because extraterritorial sales transactions linked to purchases made in periods other than those considered by the challenged provision could not be taken into account for the purposes of determining the taxable base.

Both aspects of the complaint cannot be upheld.

With regard to the first, it should be noted that there is no merit in the assertion that the VAT system does not envisage the notion of "linkage" (*afferenza*) and hence the possibility for a correlation between the transactions carried out.

Article 19(2) of Decree of the President of the Republic No 633/1972 provides that: '[n]o tax shall be deductible on the purchase or importation of goods and services linked to transactions that are exempt or otherwise not subject to tax, except as provided for in Article 19-*bis*2".

Requiring linkage between different transactions is therefore not alien to the structure of VAT, and Court of Cassation case law has clarified its scope, with specific reference to the question of the limits of deductibility, reasoning in terms of the existence of an instrumental relationship between different transactions (Court of Cassation (Fifth Civil Division) Order No 34957 of 17 November 2021).

Accordingly, in order to define the limits within which sales transactions not meeting the prerequisite of territoriality may not be taken into account in the taxable base, it was not unreasonable for the legislature to require linkage with the corresponding purchase transactions.

This also applies to the second aspect, concerning the possibility that the territorially linked purchase was not made within the time periods covered by the legislation. At most, it would be a mere inconvenience even if the consequence feared by the referring court could be drawn from the provision.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

1) *declares* unconstitutional Article 37(3) of Decree-Law No 21 of 21 March 2022 (Urgent measures to counter the economic and humanitarian effects of the Ukrainian crisis), converted with amendments into Law No 51 of 20 May 2022, as amended by Article 55 of Decree-Law No 50 of 17 May 2022 (Urgent measures on national energy policies, business productivity and investment attraction, as well as on social policies and the Ukrainian crisis), converted with amendments into Law No 91 of 15 July 2022, and as amended by Article 1(120) of Law No 197 of 29 December 2022 (State budget for the 2023 financial year and multi-year budget for the 2023-2025 period), insofar as it provides that "[f]or the purposes of calculating the balance referred to in paragraph 2, the total amount of sales transactions, net of VAT, shall be taken into account" instead of "[f]or the purposes of calculating the balance referred to in paragraph 2, the total amount of sales transactions, net of VAT and excise duties paid to the State and stated in the sales invoices, shall be taken into account";

2) *declares* inadmissible the questions as to the constitutionality of Article 37 of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted into law, raised – with reference to Articles 3, 23, 41, 42, 53 and 117 of the Constitution, the latter in conjunction with Article 1 of Protocol No 1 to the European Convention on Human Rights – by the First Instance Tax Court of Rome (Section 27) in the relevant referral orders;

(3) *declares* unfounded the questions as to the constitutionality of Article 37 of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted into law, and subsequently amended by Article 1(120) of Law No 197/2022, raised – with reference to Articles 3, 23, 42, 53 and 117 of the Constitution, the latter in conjunction with Article 1 of Protocol No 1 to the European Convention on Human Rights – by the First Instance Tax Court of Milan (Section 12) in the relevant referral orders;

(4) *declares* unfounded the questions as to the constitutionality of Article 37(3-*ter*) of Decree-Law No 21/2022, as converted by parliament, amended by Article 55 of Decree-Law No 50/2022, as converted into law, and subsequently amended by Article 1(120) of Law No 197/2022, raised – with reference to Articles 3 and 53 of the Constitution – by the First Instance Tax Court of Milan (Section 12) in the relevant referral orders.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 4 June 2024.

Signed:

Augusto Antonio BARBERA, President

Luca ANTONINI, Judge Rapporteur