ORDER NO. 24 YEAR 2017

**In this case the Court heard references concerning the ruling contained in an ECJ judgment, according to which the rule on the statutory limitation of offences should be disregarded under certain circumstances, on the grounds that to follow that rule might result in a situation in which the application of EU law resulted in a breach of fundamental rights provided for under the Italian Constitution. Specifically, whilst the Taricco case excluded the rules on the limitation of offences from the scope of Article 49 of the Nice Charter, it "did not assert that the Member States must disregard any of their own rules and constitutional traditions that prove to be more beneficial for the accused compared to Article 49 of the Nice Charter and Article 7 ECHR". The Court therefore sought a preliminary reference from the ECJ according to an expedited procedure.**

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

ORDER

in proceedings concerning the constitutionality of Article 2 of Law no. 130 of 2 August 2008 (Ratification and implementation of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community and certain related acts, with final act, protocols and declarations done in Lisbon on 13 December 2007), initiated by the Milan Court of Appeal by the referral order of 18 September 2015 and by the Court of Cassation by the referral order of 8 July 2016, registered respectively as no. 339 in the Register of Referral Orders 2015 and as no. 212 in the Register of Referral Orders 2016 and published in the Official Journal of the Republic, nos. 2 and 41, first special series 2016.

Considering the entry of appearance by M.A.S. and M.B. and the intervention by the President of the Council of Ministers;

having heard the judge rapporteur Giorgio Lattanzi at the public hearing of 23 November 2016;

having heard Counsel Gaetano Insolera and Counsel Andrea Soliani for M.A.S., Counsel Nicola Mazzacuva for M.B. and the State Counsel [*Avvocato dello Stato*] Gianni De Bellis for the President of the Council of Ministers.

*The facts of the case and conclusions on points of law*

1.– The third criminal division of the Court of Cassation and the Milan Court of Appeal have referred to this Court a question concerning Article 2 of Law no. 130 of 2 August 2008 (Ratification and implementation of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community and certain related acts, with final act, protocols and declarations done in Lisbon on 13 December 2007), insofar as it authorises the ratification and gives legal effect to Article 325(1) and (2) of the Treaty on the Functioning of the European Union (TFEU), signed in Rome on 25 March 1957 (text as consolidated by the amendments introduced by the Treaty of Lisbon of 13 December 2007), as interpreted by the judgment of the Grand Chamber of the Court of Justice of the European Union of 8 September 2015 in Case C-105/14, *Taricco*.

By this decision, the Court of Justice held that Article 325 TFEU requires the national courts to disregard the combined provisions of Articles 160, last paragraph, and 161(2) of the Criminal Code if the resulting national rule prevents the imposition of effective

and dissuasive penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or provides for longer limitation periods in respect of cases of fraud affecting the financial interests of the Member State concerned than in respect of those affecting the financial interests of the European Union.

As a result of Articles 160, last paragraph, and 161(2) of the Criminal Code, acts that suspend the limitation period for tax offences punished under Legislative Decree no. 74 of 10 March 2000 (New provisions governing offences in the area of income tax and value added tax, adopted pursuant to Article 9 of Law no. 205 of 25 June 1999) concerning VAT, entail as a rule, except in special cases, an increase by one quarter of the limitation period. Where this increase proves in a significant number of cases, to be inadequate in order to punish serious fraud affecting the financial interests of the Union resulting from the failure to collect VAT within the national territory, the criminal courts should pursue prosecutions and should not apply the rules on limitation periods, and similarly the [national] courts should act as if national law stipulated limitation periods for corresponding offences against the state that are longer than those applicable to fraud affecting the financial interests of the Union.

The referring courts are hearing prosecutions for tax fraud punished by Legislative Decree no. 74 of 2000 relating to the collection of VAT, which they consider to be serious and which would have been time-barred had Articles 160, last paragraph, and 161(2) of the Criminal Code been applicable, whilst otherwise the proceedings would have resulted in convictions. The referring courts add that the exemption from punishment resulting from the application of Articles 160, last paragraph, and 161(2) of the Criminal Code applies in a considerable number of cases.

The Milan Court of Appeal is also examining legislation which it considers to violate the principle of assimilation, because the offence of criminal conspiracy for the purpose of smuggling tobacco products processed abroad, as provided for under Article 291-*quater* of Presidential Decree no. 43 of 23 January 1973 (Approval of the consolidated text of legislative provisions of customs law), which is comparable to the offence of criminal conspiracy for the purpose of VAT offences affecting the financial interests of the Union, is not subject to the limit on the increase of limitation periods by one quarter in the event that they are suspended.

In both proceedings, the prerequisites laid down by Article 325(1) and (2) TFEU have been met, and hence the courts should rule that limitation does not apply and decide on the merits.

However, the referring courts doubt that this solution is compatible with the supreme principles of the Italian constitutional order and with the requirement to respect inalienable human rights, as laid down by Articles 3, 11, 24, 25(2) 27(3) and 101(2) of the Constitution, with particular reference to the principle of legality in criminal matters. This principle requires that choices concerning the regime of punishment must be made exclusively by the legislator, through the enactment of laws that are sufficiently precise and applicable only to acts carried out after their entry into force. On the other hand, according to the referring courts, the requirement to disregard Article 160, last paragraph, and 161(2) of the Criminal Code, which also applies to conduct prior to the date of publication of the judgment given in the *Taricco* case, results in a retroactive increase in the severity of the punishment regime. In addition, the relevant legislation is not sufficiently precise, as it has not been clarified either when fraud must be considered to be serious or when there is a sufficiently high number of cases involving an exemption from punishment as to require Articles 160, last paragraph, and 161(2) of the

Criminal Code to be disregarded, thereby leaving the decision regarding this matter to the courts.
The proceedings concern similar questions and should be joined for decision.
2.– The recognition of the primacy of EU law is an established fact within the case law of this Court pursuant to Article 11 of the Constitution; moreover, according to such settled case law, compliance with the supreme principles of the Italian constitutional order and inalienable human rights is a prerequisite for the applicability of EU law in Italy. In the highly unlikely event that specific legislation were not so compliant, it would be necessary to rule unconstitutional the national law authorising the ratification and implementation of the Treaties, solely insofar as it permits such a legislative scenario to arise (see Judgments no. 232 of 1989, no. 170 of 1984 and no. 183 of 1973).
Furthermore, there is no doubt that the principle of legality in criminal matters is an expression of a supreme principle of the legal order, which has been posited in order to safeguard the inviolable rights of the individual insofar as it requires that criminal rules must be precise and must not have retroactive effect. This principle is laid down by Article 25(2) of the Constitution, according to which "No person may be punished except by virtue of a law that was in force at the time the offence was committed".
Were the application of Article 325 TFEU to entail the incorporation into the legal order of a rule at odds with the principle of legality in criminal matters, as is hypothesised by the referring courts, this Court would be under a duty to prevent it.
3.– It is therefore necessary to establish as a preliminary matter whether Article 325 TFEU should actually be applied in the manner indicated by the referring courts or whether it is also open to any other interpretation, even if in part different, that is capable of precluding any conflict with the principle of legality in criminal matters laid down by Article 25(2) of the Italian Constitution, along with the similar principles contained in the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 and, in an adapted version, on 12 December 2007 in Strasbourg, and within the shared constitutional traditions of the Member States.
Given a persisting interpretative doubt concerning EU law, which it is necessary to resolve in order to decide on the question of constitutionality, it is thus appropriate to seek further clarification from the Court of Justice concerning the meaning to be attributed to Article 325 TFEU on the basis of the judgment given in the *Taricco* case.
4.– The rule inferred from Article 325 TFEU by the judgment given in the *Taricco* case interferes with the legal regime governing the limitation periods for offences, which the courts are required to disregard under the circumstances indicated in that decision.
Under the national legal order, the legal regime governing limitation periods is subject to the principle of legality in criminal matters laid down by Article 25(2) of the Constitution, as has been repeatedly acknowledged by this Court (see most recently Judgment no. 143 of 2014). It is therefore necessary to describe it in detail, as is done for the offence and the punishment, by means of a rule in force at the time the offence was committed.
This is in fact an institute that impinges upon the liability to punishment of individuals, and the law consequently regulates it on the basis of an assessment that is made with reference to the level of social alarm caused by a certain offence and the idea that, following the passage of time after the commission of the offence, the requirements for punishment have diminished and the author has acquired a right for it to be forgotten (see Judgment no. 23 of 2013).

It is well known that certain Member States by contrast embrace a procedural conception of limitation, to which the judgment given in the *Taricco* case is closer, based also on the case law of the European Court of Human Rights; however, there are others, including Spain (STC 63/2005 of 14 March), which adopt a substantive concept of limitation that does not differ from that applied in Italy.

It is useful to note that, in the European legal context, there is no requirement whatsoever for uniformity across European legal systems regarding this aspect, which does not directly affect either the competences of the Union or the provisions of EU law. Each Member State is therefore free to conceptualise the limitation of criminal offences in either substantive or procedural terms, in accordance with its own constitutional tradition.

This conclusion was not placed in doubt by the judgment given in the *Taricco* case, which limited itself to excluding limitation from the scope of Article 49 of the Nice Charter, but did not assert that the Member States must disregard any of their own constitutional rules and traditions that prove to be more beneficial for the accused compared to Article 49 of the Nice Charter and Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law no. 848 of 4 August 1955. Moreover, this would not be permitted within the Italian legal system where these assert a supreme principle of the constitutional order, as is the case for the principle of legality in criminal matters throughout the substantive area of law to which it applies.

5.– Based on the correct consideration that the principle of legality in criminal matters applies also to the legal rules governing the limitation of offences, this Court has been requested by the referring courts to consider, *inter alia*, whether the rule inferred from the judgment given in the *Taricco* case fulfils the requirement of certainty, which is a constitutional requirement for the provisions of substantive criminal law. Such provisions must be formulated in terms that are clear, precise and stringent, both in order to enable people to understand the consequences of their actions under criminal law and also in order to prevent arbitrariness when applied by the courts.

It is a principle which, as has been recognised by the Court of Justice, is one of the constitutional traditions common to the Member States as the corollary of the principle of legal certainty (see judgment of 12 December 1996 in Joined Cases C-74/95 and C-129/95, paragraph 25).

The verification must therefore operate on two levels.

It is first and foremost necessary to establish whether the individual could reasonably foresee, on the basis of the legislative framework applicable at the time the offence was committed, that EU law, and in particular Article 325 TFEU, would have required the courts to disregard Articles 160, last paragraph, and 161(2) of the Criminal Code in the event that the conditions laid down by the Court of Justice in the *Taricco* case obtained.

This is an indispensable principle of constitutional principles in the area of criminal law. Specifically, the written provision stipulating which offences are to be punished, with which penalties and, in the case at issue here, within which temporal horizon must enable "a sufficiently clear and immediate perception of the relative normative requirement" (see Judgment no. 5 of 2004).

It is certainly not for this Court to attribute to Article 325 TFEU a meaning different from that which it was found to have by the Court of Justice; it is in fact its duty to take note of that meaning and to decide whether it could have been appreciated by the individual who carried out the acts of relevance under criminal law.

A similar concern is moreover shared by the Strasbourg Court under Article 7 ECHR with regard to the need, which has been repeatedly asserted, that it must have been possible for the perpetrator to have known of the offence and the penalty at the time it was committed. It is important to point out that, whilst not denying that the state may conceive of limitation in a procedural sense (see judgment of 22 June 2000, *Coëme and others v. Belgium*), the ECtHR also reserves the right to sanction it where there is no certain and foreseeable legal basis in criminal law for the extension of the state's power of punishment beyond the temporal limit stipulated at the moment the offence was committed (see judgment of 20 September 2011, *Oao Neftyanaya Kompaniya Yukos v. Russia*).

Accordingly, the compatibility of the rule laid down in the judgment given in the *Taricco* case with the ECHR must be assessed on the basis of the fact that limitation is substantive in nature in Italy. For this reason, it is then necessary to ask whether, in the light of Article 7 ECHR, that rule was foreseeable and thus had a basis in law (see *inter alia* Grand Chamber, judgment of 21 October 2013, *Del Rio Prada v. Spain*, paragraph 93).

Within this perspective, this Court is convinced that an individual could not have reasonably considered, prior to the judgment given in the *Taricco* case, that Article 325 TFEU required the courts to disregard Articles 160, last paragraph, and 161(2) of the Criminal Code in situations in which this would have resulted in an exemption from punishment in a considerable number of cases involving serious fraud affecting the financial interests of the Union, specifically in breach of the principle of assimilation.

Secondly, it is necessary to examine both whether the requirement of reservation to primary legislation has been respected, and the level of certainty provided by the criminal law under Article 325 TFEU with regard to the power of the courts, which cannot be empowered to make choices based on discretionary assessments of criminal policy. In particular, the period of time necessary in order for limitation of an offence to operate and the legal operations which must be carried out to calculate it must result from the application by the criminal courts of legal rules that are sufficiently precise. Otherwise, the content of these rules would be established by the courts on a case-by-case basis, which is without doubt prohibited by the principle of the separation of powers, which Article 25(2) of the Constitution applies with particularly stringency to the criminal law.

Within this perspective, it is necessary to assess whether the rule laid down by the judgment given in the *Taricco* case is capable of delineating the discretion of the courts. Moreover, also in this regard, it must be noted that there is no way of establishing through interpretation, and with the requisite certainty, the requirement of the considerable number of cases, upon which the effect indicated by the Court of Justice is conditional.

This Court does not doubt that the rule applies to the systematic impunity which the legal rules governing the suspension of limitation periods entails for tax fraud; however, the concept remains by its very nature ambiguous, and in any case cannot be substantiated through interpretation.

Under the Italian legal system, as is the case under European law, the activity of the courts is governed by the provisions of the criminal law; conversely, the criminal law cannot limit itself solely to setting objectives for the courts. It thus cannot be excluded that national law can and must be disregarded if this is required in specific cases by European law. On the other hand, it is not possible for EU law to set an objective as to

the result for the criminal courts and for the courts to be required to fulfil it using any means available within the legal order, without any legislation laying down detailed definitions of factual circumstances and prerequisites.

6.– Having clarified the specific grounds for incompatibility between the rule which the judgment in the *Taricco* case has inferred from Article 325 TFEU and the principles and rights enshrined in the Constitution, it is necessary to ask whether the Court of Justice took the view that the national courts should apply the rule even where it conflicts with a supreme principle of the Italian legal system.

This Court thinks that it did not, but considers that it is in any case appropriate to bring the doubt to the attention of the Court of Justice.

According to Article 4(3) of the Treaty on European Union (TEU), as amended by the Treaty of Lisbon, signed on 13 December 2007, ratified and implemented by Law no. 130 of 2 August 2008, and which entered into force on 1 December 2009, relations between the Union and the Member States are defined according to the principle of loyal cooperation, which implies mutual respect and assistance. This entails that the parties are united in diversity. There would be no respect if the requirements of unity were to demand the cancellation of the very core of values on which the Member State is founded. And there would also be no respect if the defence of diversity were to extend beyond that core and end up hampering the construction of a peaceful future, based on common values, referred to in the preamble to the Nice Charter.

The primacy of EU law does not express a mere technical configuration of the system of national and supranational sources of law. It rather reflects the conviction that the objective of unity, within the context of a legal order that ensures peace and justice between nations, justifies the renunciation of areas of sovereignty, even if defined through constitutional law. At the same time, the legitimation for (Article 11 of the Italian Constitution) and the very force of unity within a legal order characterised by pluralism (Article 2 TEU) result from its capacity to embrace the minimum level of diversity that is necessary in order to preserve the national identity inherent within the fundamental structure of the Member State (Article 4(2) TEU). Otherwise, the European Treaties would seek, in a contradictory fashion, to undermine the very constitutional foundation out of which they were born by the wishes of the Member States.

These considerations have always underpinned the action both of this Court, when finding Article 11 of the Constitution to constitute the linchpin for the European legal order, and also of the Court of Justice when, anticipating Article 6(3) TEU, it incorporated into EU law the constitutional traditions common to the Member States.

It follows as a matter of principle that EU law and the judgments of the Court of Justice that clarify its meaning for the purposes of its uniform application cannot be interpreted as requiring a Member State to give up the supreme principles of its constitutional order.

Naturally, the Court of Justice is not exempt from the task of defining the scope of EU law and cannot be further encumbered by the requirement of assessing in detail whether it is compatible with the constitutional identity of each Member State. It is therefore reasonable to expect that, in cases in which such an assessment is not immediately apparent, the European court will establish the meaning of EU law, whilst leaving to the national authorities the ultimate assessment concerning compliance with the supreme principles of the national order. It then falls to each of these legal systems to establish which body is charged with this task. The Constitution of the Republic of Italy vests this

task exclusively in this Court, and the referring courts have thus done well to apprise it of the problem by referring a question of constitutionality.

7. – The position set forth above in general terms is confirmed in the case before this Court. The judgment in the *Taricco* case held that Article 325 TFEU has direct effect and entails an obligation to set aside national legislation on the limitation of offences which, in the situations and under the circumstances identified, compromises the efficacy of the penalty. The decision also held, although only with reference to the prohibition on the retroactivity of criminal penalties, that the rule thereby asserted did not violate Article 49 of the Nice Charter and Article 7 ECHR.

The European judgment does not consider the compatibility of the rule with the supreme principles of the Italian constitutional order, but appears to have expressly delegated this task to the competent national bodies. In fact, paragraph 53 of the judgment asserts that "if the national court decides to disapply the national provisions at issue, it must also ensure that the fundamental rights of the persons concerned are respected". Paragraph 55 goes on to add that the disapplication is to be ordered "subject to verification by the national court" of respect for the rights of the accused.

The conviction of this Court, confirmation of which is sought from the Court of Justice, is that the intention in making these assertions was to state that the rule inferred from Article 325 TFEU is only applicable if it is compatible with the constitutional identity of the Member State, and that it falls to the competent authorities of that State to carry out such an assessment.

Under Italian law this may occur on the initiative of the courts which, having been called upon to apply this rule, have asked this Court to assess its compatibility with the supreme principles of the constitutional order. This Court will then be under a duty to ascertain, as the case may be, whether it is incompatible and consequently to assert that the rule cannot apply in Italy.

Were this interpretation of Article 325 TFEU and of the judgment given in the *Taricco* case to be correct, no grounds for contrast would remain and the question of constitutionality would not be upheld.

None of this would however alter the liability of the Republic of Italy for having failed to provide an effective remedy against serious tax fraud affecting the financial interests of the Union or in breach of the principle of assimilation, and in particular for having compromised the effect, in terms of time limits, of acts that suspend the limitation period.

In view of the above, it would be necessary for the competent authorities to assess whether the problem has been resolved by Article 2(36-*vicies semel*)(l) of Decree-Law no. 138 of 13 August 2011 (Further urgent measures on financial stabilisation and development), converted with amendments by Article 1(1) of Law no. 148 of 14 September 2011, which increased by one third the limitation periods for the offences punished by Articles 2 to 10 of Legislative Decree no. 74 of 2000, although the provision was not made applicable to offences committed before the law came into force.

Were it to be decided that the problem has not been so resolved, the legislator would be required to take action urgently in order to ensure the efficacy of proceedings concerning the frauds in question, and, as the case may be, also by ensuring that the outcome is not compromised by inadequate limitation periods.

8.– This Court would like to stress that, whilst the aim of the interpretation set out above is to preserve the constitutional identity of the Republic of Italy, it does not

however compromise the requirements of uniform application of EU law and is thus a solution that complies with the principle of loyal cooperation and proportionality.
In fact, it does not call into question the meaning which the Court of Justice has ascribed to Article 325 TFEU.
The bar on the direct application by the national courts of the rule laid down by the Court does not result from an alternative interpretation of EU law, but exclusively from the fact, which in itself falls outside the substantive scope of EU law, that the Italian legal system classifies the legislation on the limitation of offences as provisions of substantive criminal law and subjects them to the principle of legality [in criminal matters] as laid down by Article 25(2) of the Constitution. This is a separate consideration from the meaning of Article 325 TFEU, which does not depend upon European law but exclusively upon national law.
It should be added that, in the present case, this classification entails a higher level of protection than that granted to accused persons by Article 49 of the Nice Charter and Article 7 ECHR. It must therefore be considered to be safeguarded by EU law itself, pursuant to Article 53 of the Charter read also in the light of the related explanation.
The Italian Constitution construes the principle of legality in criminal matters more broadly than European law as it does not limit itself to describing the conduct constituting the offence and the penalty, but rather covers all substantive aspects of liability to punishment. It follows from this that the Union respects this level of protection for human rights, both in accordance with Article 53 of the Nice Charter, which provides that "[n]othing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised […] by the Member States' constitutions", and also because, otherwise, the process of European integration would have the effect of undermining national conquests in the area of fundamental freedoms and would depart from its path of unification whilst guaranteeing respect for human rights (Article 2 TUE).
By contrast, the Court of Justice has recognised that the various Member States need not protect fundamental human rights in the same way, even where this entails a restriction on the freedoms granted under the Treaties. Each Member State protects those rights in accordance with its own legal order (see judgment of 14 October 2004 in Case C-36/02, *Omega Spielhallen und Automatenaufstellungs GmbH v. Oberbürgermeisterin der Bundesstadt Bonn*).
The case examined here is clearly distinct from that ruled upon by the Grand Chamber of the Court of Justice by the judgment of 26 February 2013 in Case C-399/11, *Melloni*, which held that no further requirements for the enforcement of a European arrest warrant could be imposed under the terms of a Member State's constitution in addition to those agreed to by "consensus reached by all the Member States regarding the scope to be given under EU law to the procedural rights enjoyed by persons convicted in absentia".
In that case, any other solution would have impinged upon the scope of Framework Decision 2009/299/JHA of 26 February 2009 (Council Framework Decision amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial), and would therefore have ruptured the unity of EU law within an area based on reciprocal trust that has a uniform legislative framework. Conversely, the primacy of EU law is not called into question in the case before this

Court because, as has already been noted, it does not question the rule laid down by the judgment in the *Taricco* case inferred from Article 325 TFEU, but only the existence of a constitutional bar on its direct application by the courts.
This bar does not result from the juxtaposition of a national provision and the rules of EU law but only from the fact, which is extraneous to EU law, that the limitation of offences in Italy is an institute of substantive criminal law, and is thus subject to the principle of legality in criminal matters.
It is thus proportionate for the Union to respect the heightened level of protection afforded by the Italian Constitution to accused persons, given that this does not entail any sacrifice to the primacy of EU law.
9.– This Court also observes that the judgment given in the *Taricco* case held that there was no incompatibility between the rule asserted therein concerning Article 49 of the Nice Charter and the sole prohibition on retroactivity, but did not examine the other aspect inherent to the principle of legality, namely the requirement that the provision concerning the regime of punishment must be sufficiently precise. This is a requirement common to the constitutional traditions of the Member States, which also features within the ECHR system of protection and as such encapsulates a general principle of EU law (see the judgment of 12 December 1996, cited above, in Joined Cases C-74/95 and C-129/95).
Even in the event that it were concluded that limitation is procedural in nature, or that it may in any case be regulated also by legislation enacted after the offence was committed, this would not affect the principle that the activity of the courts that are called upon to apply it must be governed by legal provisions that are sufficiently precise. This principle encapsulates a defining feature of the constitutional systems of the Member States of civil law tradition. These do not grant the courts the power to create new criminal law in place of that established by legislation approved by Parliament, and in any case reject the notion that the criminal courts may be charged with fulfilling a purpose, albeit defined by law, if the law does not specify in what manner and within what limits this may occur.
The broad consensus that is widespread amongst the Member States concerning this key principle of the division of powers suggests that Article 49 of the Nice Charter has the same scope in accordance with Article 52(4) of the Charter.
However, whilst Article 325 TFEU formulates an obligation as to a clear and unconditional result, according to the ruling of the Court of Justice, it fails to indicate in sufficient detail the path which the criminal courts are required to follow in order to achieve that purpose. However, this could potentially end up allowing the judiciary to disregard any normative element whatsoever pertaining to liability to punishment or to the trial, where it was considered to be an obstacle to punishment of the offence.
This conclusion would exceed the limits applicable to the exercise of judicial powers within a state governed by the rule of law, at least within the continental tradition, and does not appear to comply with the principle of legality laid down by Article 49 of the Nice Charter.
If it is considered that Article 325 TFEU has a similar meaning, it is thus necessary to establish whether it is consistent with Article 49 of the Nice Charter, which has the same legal value as the Treaties (Article 6(1) TEU), with regard to the lack of precision in the European provision, where it interferes with the rights of the accused within a criminal trial.

10.– In conclusion, were the Court of Justice to agree with this Court as to the meaning of Article 325 TFEU and of the judgment given in the *Taricco* case, the questions of constitutionality raised by the referring court would be rendered moot.
11.– According to Article 105 of the Rules of Procedure of the Court of Justice of 25 September 2012, it is requested that this preliminary reference be determined pursuant to an expedited procedure.
There is at present serious uncertainty concerning the meaning to be attributed to EU law, which has an effect on criminal trials currently pending and which must urgently be resolved as soon as possible. Moreover, it is impossible to understate the priority importance of the questions of law that have been raised and the benefit in resolving the respective doubts as quickly as possible.
Considering Article 267 of the Treaty on the Functioning of the European Union and Article 3 of Law no. 204 of 13 March 1958 on the "Ratification and implementation of the following international agreements signed in Brussels on 17 April 1957: a) Protocol on the Privileges and Immunities of the European Communities; b) Protocol on the Statute of the Court of Justice of the European Economic Community; c) Protocol on the Privileges and Immunities of the European Atomic Energy Community; d) Protocol on the Statute of the Court of Justice of the European Atomic Energy Community (excerpt: Euratom protocols)".

ON THESE GROUNDS
THE CONSTITUTIONAL COURT

having joined the cases, hereby,
1) orders that the following questions concerning the interpretation of Article 325(1) and (2) of the Treaty on the Functioning of the European Union be referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 of that Treaty:
must Article 325(1) and (2) of the Treaty on the Functioning of the European Union be interpreted as requiring the criminal courts to disregard national legislation concerning limitation periods that precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the Union, or that provides for shorter limitation periods for fraud affecting the financial interests of the Union than those applicable to fraud affecting the financial interests of the Member State, even when there is not a sufficiently precise legal basis for setting aside such legislation;
must Article 325(1) and (2) of the Treaty on the Functioning of the European Union be interpreted as requiring the criminal courts to disregard national legislation concerning limitation periods that precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the Union, or that provides for shorter limitation periods for fraud affecting the financial interests of the Union than those applicable to fraud affecting the financial interests of the Member State, even when limitation is part of the substantive criminal law in the Member State's legal system and is subject to the principle of legality;
must the judgment of the Grand Chamber of the Court of Justice of the European Union of 8 September 2015 in Case C-105/14, *Taricco*, be interpreted as requiring the criminal courts to disregard national legislation concerning limitation periods that precludes, in a significant number of cases, the punishment of serious fraud affecting the financial interests of the European Union, or that provides for shorter limitation periods for fraud affecting the financial interests of the European Union than those applicable to fraud affecting the financial interests of the Member State, even when the setting aside such

legislation would contrast with the supreme principles of the constitutional order of the Member State or with the inalienable human rights recognised under the Constitution of the Member State;

2) asks that the reference for a preliminary ruling be determined pursuant to an expedited procedure;

3) stays the present proceedings pending a decision on the aforementioned references for a preliminary ruling;

4) orders that a copy of this order be transferred immediately along with the case file to the Registry of the Court of Justice of the European Union.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 23 November 2016.