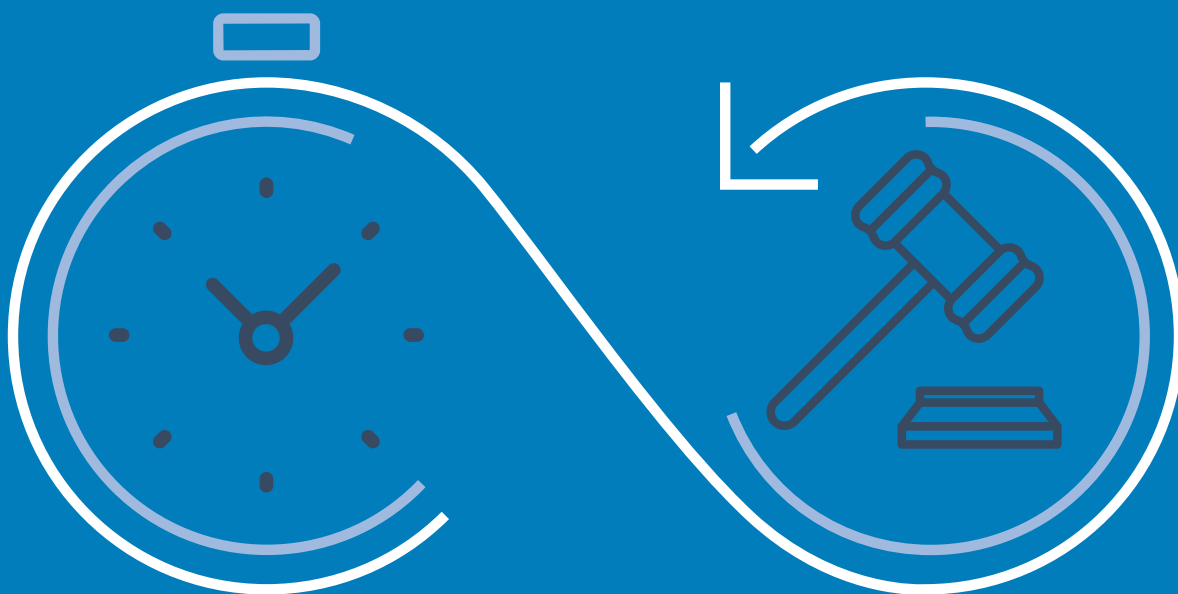
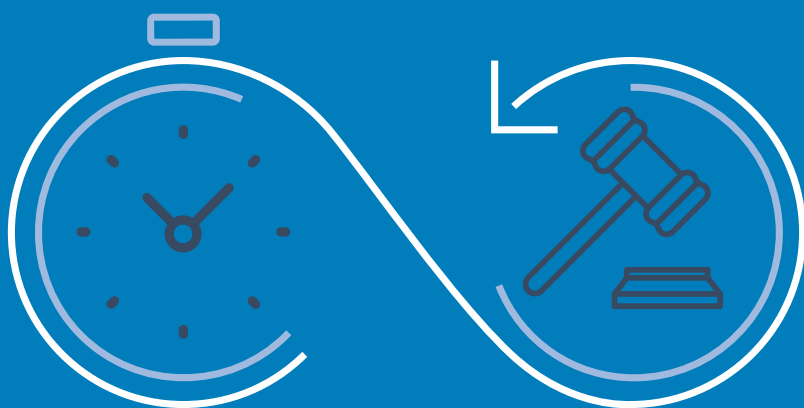

IMPACT OF STATUTES OF LIMITATIONS IN CORRUPTION CASES AFFECTING EU FINANCIAL INTERESTS

A COMPARATIVE REPORT



TRANSPARENCY
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EXECUTIVE SUMMARY

A non-satisfactory regulation of the statutes of limitations (hereinafter SOL) represents a major obstacle in contrasting corruption-related offences. The purpose of this report is to analyse different legal framework to identify how weak regulations affect the efforts made to contrast corruption, with a specific focus on the damage that may ensue to the protection of EU financial interests.

To this end, this report makes a comparison between the legal framework of six different Member States: researchers focusing on Italy, Greece, Spain, Bulgaria, Portugal and Romania present the efficiencies and deficiencies of the different approaches adopted in these countries.

In addition, based on the European Court of Justice judgement in Taricco¹, this report analyses national experts' opinions and possible scenarios which might arise at country level.

A major conclusion of this report is that there is a considerable diversity of regulations, which reflects the identification of statutes of limitation "as problematic" only in limited countries though somehow seems to affect, at least indirectly, all the countries involved in this study.

A first result is that the (short) length of limitation periods is not the main criticisable factor; other relevant aspects are more important, such as the establishment of absolute statutes of limitation, the scarceness of causes for suspension or interruption, the expectable delays in transnational cases, the "ways out" or clauses granted to specific individuals.

Statutes of limitation are often related to other issues which are perceived as more detrimental to the entire national system, such as the lack of resources to detect and prosecute corruption-related crimes, the length of criminal justice proceedings or the lack of impartiality in the laws that create privileges for specific categories of citizens.

¹ Specifically, case C-105/14 Ivo Taricco and Others, delivered by EU Court of Justice on September 8, 2015

HISTORY AND PERCEPTION OF STATUTES OF LIMITATIONS

1.1 NATIONAL LAWS AND REGULATIONS ON STATUTES OF LIMITATIONS

Notwithstanding a common trend of reforming anticorruption frameworks in EU Member States, only a few of the countries analysed consider their statute of limitation systems as an obstacle to the correct functioning of the judicial system.

Almost all the countries have somehow reviewed their regime on SOL over the last ten years, not all of them in a desirable direction and not all of them in relation to the core of the framework, or paying particular attention to the protection of European funds.

In Bulgaria, SOL rules have been changed in the last year but only for “political” reasons rather than systemic ones, being the review related to the exclusion from SOL of crimes committed by the members of the Communist Party’s governing bodies from 1944 to 1989.

In Romania, the review of the Criminal Code (2009) marginally changed the SOL though the reduction in the criminal sanctions established for several crimes led to a decrease of the related SOL.

In Spain, SOL rules have been amended for three times over the last years (2010, 2012 and 2015), always making limitation periods longer.

In Portugal, anticorruption law was reformed both in 2010² and in 2015³, and SOL along with it: limitation periods were increased for corruption and corruption-related crimes, in particular for fraudulent crimes to obtain subsidies. Such amendments were introduced as a result of uncoordinated pressure, making it necessary to harmonise the rules to ensure a better clarity of the national framework.

In Greece, SOL for petty offences have been recently made longer⁴ and, more interestingly, an exception granted to Ministers and members of government for a shortened 5-year SOL was removed⁵.

Italy underwent a radical reform in 2005⁶, driven by political and personal reasons⁷, which severely shortened the SOL and weakened the framework. Since then, the debate to reform such framework has represented a delicate matter. A bill of law reforming criminal procedural law is currently being discussed by the Senate after being approved by the House of Representatives and it includes strong amendments to the current law on SOL.

Italy is the only country out of the six countries examined in this report where SOL are the object of existing legislative processes though where national experts consider the framework not to be exhaustive.

According to the national experts interviewed for this report, Italy is the only country where there is a strong need for reform; there is room for improvement in Spain and Greece while there is a lack of consensus for Bulgaria and Portugal; SOL are considered adequate in Romania.

In Italy SOL are considered as a tool for impunity for certain types of crime, like white collar, corruption-related and fiscal crimes. Among the factors that contribute to such system are the length of SOL compared to the average length of criminal trials, the courts’ heavy workload, the late discovery of several crimes, the strategies of defence attorneys who strive to have the case declared statute-barred rather than have the defendant acquitted based on the merits of the proceeding.

Experts and practitioners in the six countries generally believe that a general reform of the procedural system, to reduce the average length of cases or speed up investigations, could help solve time-related problems.

Also, in relation to SOL for corruption-related crimes and with the exception of Italy, SOL are considered long enough (even too long in Romania) to enable the judicial system to prosecute criminals. In countries like Italy, an ineffective SOL framework is considered to be a powerful

obstacle to the prevention and fight against this kind of crimes which are difficult to detect and investigate because of their hidden nature and of the agreement between the different parties involved in the criminal conduct; elsewhere, SOL are occasionally mentioned as a potential obstacle, with many experts pointing to the difficulty for prosecutors to establish when the crime was exactly committed and when the related SOL started running.



SILVIO BERLUSCONI AND THE ART OF TIMELY AMENDING SOL LEGISLATION IN ITALY

SILVIO BERLUSCONI, THE FAMOUS ITALIAN ENTREPRENEUR AND FORMER PRIME MINISTER IN MULTIPLE MANDATES, HAS A VERY CLOSE RELATIONSHIP WITH SOL-RELATED LAWS. SINCE THE 1990S HE HAS BEEN INDICTED MULTIPLE TIMES AND MANY OF THE CASES AGAINST HIM HAVE BECOME STATUTE BARRED, SOME OF THEM THANKS TO FAVOURABLE SOL LEGISLATION AND TO TIMELY LAW REVIEWS ENACTED UNDER HIS PRESIDENCY.

1

Lodo Mondadori. Berlusconi was indicted for participating in corruption in judicial acts for having paid some judges to rule in his favour in a civil case on the ownership of a publishing company. He was acquitted in the first instance trial; the Court of Appeal reformulated the charges to simple bribery and the case became statute barred.

2

All Iberian 1. Berlusconi was indicted for unlawful party financing to the benefit of the former socialist party and for aggravated false accounting, to conceal the transfer of large sums of money to off-shore companies. Because of a judicial mistake, the trial was split into two separate proceedings for the two crimes: statute of limitation for unlawful party financing was then stated to run as from 1992 (it would have been as from 1996 if the crimes had been prosecuted together). At the end of the first-instance case, Berlusconi was acquitted for irregularities on 10 of the 22 contested billion Lira⁸ and was convicted to two years of imprisonment plus a fine of 10 billion Lira. In October 1999, the Court of Appeal declared all the cases statute barred⁹.

² Law n. 32/2010.

³ Law n. 30/2015.

⁴ From one to two years, under article 24.2 of Law n.4055/2012 on Fair Trial and Reasonable Length of Proceedings.

⁵ Law n.3961/2011. Despite the recent abolition of the short five-year limitation period that was provided for both felonies and misdemeanours committed in the performance of Ministers' duties, relevant legislation still provides for a limit period within which Parliament is entitled to proceed with their criminal prosecution; once this period is over, no legal action can be taken against them.

⁶ Law n.251/2005, also known as "Former Cirielli Law", after the name of the MP who first introduced the law into Parliament where it was completely modified. He later refused to acknowledge the paternity of the law

⁷ Several political figures were under trial for corruption-related crimes.

⁸ One billion Lira is equivalent to approximately 500 million Euros.

⁹ The Italian Supreme Court, Cassazione, confirmed this decision in November 2000.

3

Fininvest Consolidated financial statements. Berlusconi was indicted for false accounting, for having used 65 off-shore companies to transfer and shelve out of the statements 1.550 billion Lira. In 2002 the Berlusconi government approved a law to decriminalize the crime of false accounting: this law reduced the maximum term of imprisonment and thus the SOL. In Italy SOL are considered a substantial element of the trial, not a procedural one; therefore, a subsequent, more favourable law is applicable to pending cases. In October 2004, the case became statute barred.

4

Fininvest Balance Sheets 1988-1992. Berlusconi was indicted for false accounting and embezzlement in the acquisition of TV licences and their overvaluation to create black funds. In October 2004, the case became statute barred.

5

Lentini Case. Berlusconi, then President of AC Milan football club, was indicted for false accounting in relation to the acquisition of the football player Gianluigi Lentini. He was also charged for having falsified balance sheets between 1991 and 1997. After the reform of 2002 and the decriminalisation of this crime, the case became statute barred in November 2002.

6

David Mills Case. Berlusconi was indicted for corruption in judicial acts for having paid 600,000 dollars to the lawyer David Mills to obtain his perjury in some trials. The case became statute barred in February 2012 when the trial against Mills became statute barred. What is peculiar is that the trial was suspended for over one year because, in August 2008, Italy enacted a law that suspended trials against people holding the four most important State offices¹⁰: the trial was then suspended for over a year until October 2009, when the Italian Constitutional Court decided that this law, also known as “Lodo Alfano”, was against the Italian Constitution.

7

Unipol Case. Berlusconi was indicted for revealing and using confidential information concerning the revelation of information related to the acquisition of a national bank. Convicted to 1 year of imprisonment in the first instance case in March 2013, the case became statute barred during the appeal case in March 2014.

Berlusconi benefited from the expiry of limitation periods in other three cases (with a fourth coming shortly). Most of the cases became statute barred after the 2005 SOL reform enacted under his mandate as Prime Minister. The most important “merits” of the reform were to strongly reduce SOL, particularly for corruption-related crimes, and to cancel the SOL regime for continuous crimes, which are now considered as individual offences for the calculation of SOL.

1.2 STATUTES OF LIMITATION AND REASONABLE LENGTH OF CRIMINAL PROCEEDINGS

One of the pillars of the European Convention on Human Rights is the right to a fair trial¹¹, with the necessary requirement for judicial proceedings to be completed within a reasonable time. Member States implement this principle but not all of them are able to effectively translate it into practice and have been frequently sanctioned for violations by the European Court of Human Rights.

SOL are related to “time” and, although some experts do not envisage a direct relationship, it is reasonable to try to relate SOL to the reasonable length of proceedings.

Short statutes of limitation represent a big lever for defence attorneys and the expiry of limitation periods is often seen as a viable strategy to be pursued more easily than an acquittal based on the merits. The existence of this favourable option creates a judicial system where attorneys strive for delays and bring appeals against all first instance decisions to have the case declared statute barred during the appeal (Italy).

On the other hand, the excessive length of SOL or the establishment of abusable causes of suspension of the limitation period can produce the opposite effect of extending time during trials, thus compromising the right to be judged within a reasonable time. In Greece, the SOL, especially for felonies, is quite long; as a result,

a number of cases are not adjudicated within a reasonable time. An expert from Portugal states that the recent introduction of a new cause for suspension¹² exaggeratedly extends the SOL thus causing an infringement of the right to a trial within a reasonable time¹³.



ARE SOME PHASES OF CRIMINAL PROCEEDINGS TOO LONG? THE SUBMARINES CASE (PORTUGAL)

This case concerns a billionaire deal for the acquisition of two navy submarines by a German consortium: suspicions of bribery involved, among many defendants, relevant Portuguese political office holders, such as the former Minister of Defence (Paulo Portas), who signed the deal, but who was only interrogated as a witness 8 years after the incident.

Investigations lasted eight years and resulted in no indictments and no formal charges being brought against anyone; then, in December 2014, the Portuguese Central Bureau for Investigation and Criminal Action (DCIAP) dismissed the case, despite the fact that two former Ferrostaal executives had pled guilty and had been convicted in a German court in December 2011 for bribing Portuguese and Greek officials in the sale of submarines to these two countries.

The case was dismissed because of the statute of limitations and the lack of evidence. In particular, the case was closed during the investigation phase, before the limitation period expired and without a certain expiration date, to avoid useless acts being performed. The reason for these excessively long preliminary activities was the lack of mutual legal assistance, short term research, poor performance by the Public Prosecutor's Office also caused by many factors of instability, external pressures and mistakes in the investigative strategy¹⁴. Moreover, this case was adjudicated under the legal framework existing before the 2010 reform.

The outcome of the case led to widespread frustration in Portugal as the 8-year investigation did not even lead to an indictment of the defendants, and the corresponding criminal procedure concerning the offsets contracts also resulted in the acquittal of all defendants. MEP Ana Gomes nonetheless attempted, in January 2015, to open a special court-led investigation following the dismissal of the case but her claim was quashed by the criminal investigation court due to the lack of the necessary objective and subjective elements of the crime, which are required in this kind of procedural request.

¹⁰ Namely the President of the Republic, the Prime Minister, The President of the Senate and the President of the House of Representatives.

¹¹ Article 6.1 of the European Convention on Human Rights.

¹² Specifically, the suspension of SOL when an appeal is lodged.

¹³ Some common law-based countries – where SOL do not exist – give defendants the option to claim that their trial is prejudiced by a culpable delay of prosecution. In Bulgaria, chapter 26 of Criminal Procedure Code regulates special proceedings: when a criminal case has started and a person is qualified as a defendant for a certain period defined by law but no indictment is filed, s/he can request to be examined by the Court

¹⁴ The Attorney General of the Republic, Joana Marques Vidal, corroborated the inadequate performance, and announced that she would make a case study to improve criminal investigation performances.

NUMBERS AND STATISTICS CONCERNING SOL

To understand how SOL rules work in different countries, we can gather statistical data on statute-barred proceedings. A tentative comparison for this study provides only partial results, since we found that several countries could not provide consistent aggregated results or only had responses from secondary sources.

In Italy, the Ministry of Justice refused to provide specific data on the number of statute-barred criminal proceedings: it should be specified that the Ministry did not claim that such data were not available; rather, that it would not release them for the purposes of this publication.

Similarly, these sets of data are either not collected or not available in Spain and Greece, which makes it difficult to understand the scale of the issue from a nationwide perspective.

In Bulgaria, data show that 37.180 criminal proceedings became statute barred in 2015, a 28.5% percentage of statute-barred proceedings compared to the overall number. The trend has been decreasing over the last few years, both in numbers and in percentage terms. Although this number may seem astonishing, it should be read carefully as it was not provided by the Ministry of Justice; rather, it was drawn from the Annual Reports of the Prosecution Office for 2015 and 2013, this meaning that a significant number of the proceedings listed therein as statute-barred are those against unknown unidentified perpetrators, which would not be listed as criminal proceedings in other countries.

Romania provides more specific data which can be useful to understand how local law operates at a numeric level, even if there is some uncertainty over the data collection method. Data show 74.449 statute-barred cases in 2015 and 115.466 in 2014, though only 1.050 in 2013 and 444 in 2012; percentages vary significantly also between 2013 and 2014, with statute-barred pro-

ceedings amounting to 11.55% in 2015, 17.12% in 2014 and only 0.16% in 2013¹⁵. Data are also available in relation to the percentage of statute-barred corruption-related crimes compared to proceedings completed for the same crimes: such data are very interesting because, although corruption crimes are difficult to investigate and are usually detected late, it seems that only few of them become statute barred: depending on the crime concerned, the percentage ranges between 0.3 and 3% of the total number of proceedings completed.

In Portugal, data are available only in relation to criminal proceedings within the jurisdiction of the District Public Prosecutor's Office in Lisbon. Such data refer to proceedings becoming statute-barred before the court-judgement phase only. The data provided by the Ministry of Justice show significantly lower numbers than the District Public Prosecutor's Office in Lisbon (a territorial jurisdiction) and were ultimately discarded for not adequately reflecting the number of criminal proceedings at a national level. Aggregated data on criminal proceedings show that approximately 0.06% of crimes became statute-barred in the last five years.

The data provided by the Directorate General for Justice Policy refer to crimes statute barred at a court level, not considering those dismissed in the course of the investigations¹⁶. Such data cover the 2011-2013 period and specifically focus on the number of defendants. Statute-barred cases amounted to 2% of the total figure in 2013. In case of active bribery, defendants were 35 with 3% of statute-barred crimes; these percentage were even lower for other corruption-related crimes and, in several cases, no proceedings were statute-barred. These numbers are consistent with the national framework which lays down very long SOL and specific regulations for corruption-related crimes.

3 / CALCULATION OF SOL

3.1 RULES THAT ESTABLISH THE LENGTH OF SOL

The countries considered in this study have SOL which run from the commitment of the crime until the final Court decision (a decision that includes all the appellate degrees). Some countries have long terms, others provide for an extensive list of causes of suspension and interruption¹⁷, others struggle to complete the judicial proceedings before the expiry of the limitation period. Italy is currently reviewing its law on SOL; the proposed bill of law introduces a different framework made of three different co-existing terms for the same proceedings. The absolute SOL will run until the end of the first-instance trial, with two further suspensions of the limitation period for the appeal (one and half years) and the third instance case (one and half years) before the Italian Supreme Court.

In most of the countries considered in this research, SOL are based on the maximum sanction provided for the relevant crime. Greece represents an exception where there are three (plus one) categories of SOL which are based on the legal classification of the crime¹⁸: petty offences (two years), misdemeanours (five years), felonies (fifteen years) and felonies sanctioned with life imprisonment (twenty years)¹⁹.

In accordance with most of the legal systems worldwide, all but one of the countries included in this report provide for classes of SOL, with crimes falling within their relevant class based on their seriousness.

CLASSES OF SOL IN BULGARIA

SANCTION	relative SOL (years)
More than 10 years	15
More than 5 years	10
More than 1 year	5
All remaining crimes	3

CLASSES OF SOL IN GREECE

SANCTION	relative SOL (years)
Life imprisonment (felonies)	20
More than 5 years and up to 20 years (felonies, incarceration)	15
More than 10 days and up to 5 years (misdemeanours, imprisonment; also pecuniary penalty over EUR 150 to EUR 15,000)	5
More than 1 day – up to 1 month (petty offences, jailing; fine over EUR 29 to EUR 590)	2

CLASSES OF SOL IN PORTUGAL

SANCTION (YEARS OF IMPRISONMENT)	SOL (years)
More than 10 years	15
More than 5 years	10
More than 1 year	5
All remaining crimes	2

¹⁵ We can only hope that the collection of statistics will improve and we consider 2014 and 2015 data as more reliable

¹⁶ Specific data on the investigations closed because of SOL were provided only by the District Prosecutor's Office in Lisbon

¹⁷ Spain, for example, where SOL are interrupted when the investigation begins and during the entire judicial process

¹⁸ According to article 111 of the Criminal Code.

¹⁹ Some exceptions to this general classification are stated in the law

In this case, it is Italy that represents an exception: until 2005 Italy had classes of SOL too, but a major law review eliminated the classes and created a different framework where each crime has a different SOL based on the maximum sanction provided for the same crime.

The countries where classes are set by law often provide for special cases and exceptions, like Portugal where corruption-related crimes are included in the top class with a fifteen-year SOL, independently of the maximum imprisonment sanction established for the crime.

Corruption-related crimes, because of their nature, are often “victims” of the expiration of limitation periods. Their hidden nature and their frequently late discovery makes the SOL run for years before investigations even start, thus limiting the chances to complete criminal proceedings before the end of the limitation period.

This is the case of Italy where cases of people convicted for corruption-related crimes are minimal compared to the number of people subject to investigations or indicted for the same categories of crimes. Italy is currently discussing a revision of the law; the bill proposal, approved by the House of Representatives and under examination by the Senate, includes a paragraph which creates an exception for corruption crimes that will have special, longer, SOL than those stated by the general law. The experts interviewed as well as local political parties do not agree on these exceptional measures: everybody seems to acknowledge the extraordinary state of impunity for those indicted for corruption, but an exception that extends SOL - already considered as very long - is not welcomed by most experts, especially as a long-term resolution.

In Romania, Law n.78/2000 establishes that the maximum imprisonment sanction must be increased by a third or a half if a corruption-related crime is committed by a high public official, a prosecutor or a judge. However, the law states that SOL are not affected by this review.

CLASSES OF SOL IN ROMANIA

SANCTION (YEARS OF IMPRISONMENT)	SOL (years)
More than 20 years	15
10-20 years	10
5-10 years	8
1-5 years	5
Less than 1 year (or fine)	3

CLASSES OF SOL IN SPAIN

SANCTION (YEARS OF IMPRISONMENT BARRING/DISQUALIFICATION)	SOL (years) ²⁰
Crimes against humanity, terrorism	No
More than 15 years	20
10-15 years	15
5-10 years	10
Less than 5 years (crimes)	5
Minor crimes (slander, defamation and others)	1

Experts from Romania, Bulgaria²¹, Spain and Greece agree that SOL for corruption crimes in their countries are relevant under the general rule framework. Some experts from Greece point out that to create special SOL regimes for specific crimes, such as corruption-related offenses, would be a source of perpetual debate as to which crime should be identified as worthy of bypassing the general rule.

As said above, Portugal has decided otherwise. Lawmakers have created an exception with an extended SOL for corruption-related crime²². Although most experts in Portugal justify this exception because of the nature of these crimes, their late discovery and investigating complexity (bank secrecy, MLA, required financial expertise), some experts consider the general SOL sufficiently long and think this could cause systemic unfairness due to equally sanctioned crimes being granted different SOL.



ERRORS IN THE LAW AND MULTIPLE ILLEGAL PAYMENTS NOT CONSIDERED AS CONTINUOUS CRIME: THE JUAN JOSE IMBRODA CASE (SPAIN).

Juan Jose Imbroda, the former president of the City of Melilla, was accused of malfeasance of public funds when hiring an external lawyer in 2001. The crime started in 2001 but payments continued in following years to reach 357,000 Euro, an amount that was allocated without following the relevant procedures.

Article 131 of the Criminal Code determines a sanction of ten years' imprisonment. An error was found in the law because it provided a SOL for crimes punished with less than ten years and a SOL for those punished with more than ten years: the exact ten years' time was not considered at the time. The Court ruled in favour of the defendant and the shorter SOL was applied.

In addition to this favourable interpretation, Imbroda was blessed again with another reading of the law. The Court considered that there was no continuing offence (which would have avoided the statute of limitations, thus computing the dies a quo since the last action carried out), as the subsequent payments made by the politician to the lawyer were not considered as independent acts or crimes, rather as acts of implementation, with the agreement to illegally pay the lawyer as the beginning of the SOL.

According to this view, the limitation period was expired when the defendant was notified of the charges and the case was statute barred.

3.2 WHEN SOL BEGIN

Consistently with international standards, in the six countries in question the limitation period starts the date when the crime is committed (or completed, depending on the kind of crime)²³. No country considers the moment when the crime is discovered as a valid option to start the running of SOL.

Different approaches are taken for SOL rules on continuous crimes: in Bulgaria, Romania, Portugal and Spain, SOL start running when the last act of the continuous crime is committed. Greece makes it start at the time of cessation of the illegal situation that damages the protected interest.

With the reform of 2005, Italy also reviewed this provision²⁴ and introduced a fragmented framework which does not recognize a unique SOL in case of continuous crimes; rather, it creates a series of multiple SOL, each of which refers to a single conduct of the crime. This provision is probably the most criticized part of the Italian SOL framework as it clashes with the execution of criminal proceedings, where these crimes, being part of a unique proceeding, have instead different limitation periods.

As regards corruption crimes, SOL start the moment when the parties reach an agreement; however, this can be declined and interpreted in slightly different ways. In Greece, SOL for bribery begin to run when the very first act was committed (i.e.

²⁰ Spain only provides for the relative statute of limitations

²¹ In Bulgaria, some experts argue that some property crimes related to municipalities in the 90's could not be punished due to SOL

²² This is the list of considered crimes: Trading in influence, Undue acceptance of advantage, Passive bribery, Active bribery, Embezzlement, Unlawful economic advantage, Abuse of power, Violation of confidentiality, Passive bribery in sports, Active bribery in sports, Active bribery in foreign trade, Passive bribery in the private sector, Active bribery in the private sector, Fraud in the obtaining of subsidies and subventions

²³ Greece provides for an exception regarding crimes of treason and torture where the limitation period begins upon restoration of the lawful authority" instead of "the period starting when the authority restores the lawful state of things.

²⁴ Article 158 of the Criminal Code.

promise, request) and are not influenced by the commission of a subsequent act, since only a given legal interest is harmed.

In Bulgaria, common rules are applicable to corruption crimes but, in these cases, different SOL run for different offenders: for the corrupter, the limitation period starts when he paid the bribe, for the corrupt when he received it.

In Romania, SOL start when the offence is committed. In some cases, after the crime has been committed, its effects continue to exist and develop without a further intervention by the offender, resulting in a more serious crime. In these cases, the crime changes, the sanction changes and the SOL accordingly, too.



DOES THE LAW OR SUPREME COURT ESTABLISH WHEN SOL START RUNNING? THE CESAR ALIERTA CASE (SPAIN)

Cesar Alierta, the former chairman of the state-owned company Tabacalera, was prosecuted for insider trading regarding the acquisition of his company's shares by a US tobacco company. The limitation period for this crime is five years in the general form and ten in the aggravated one: the latter is triggered when the public interest is violated. The Supreme Court stated that the general interest was not harmed because the sum was not relevant²⁵, because the action was isolated and not an engineered scheme, because the position of Mr Alierta as chairman was not relevant to the case as Tabacalera was a publicly-owned company at IBEX, and because damage can only occur if insider information concerns a price drop and not when it is incremental to someone's benefit.

The case then fell into five-year SOL regime, which would have allowed for the proceedings against Alierta because the sale of shares had taken place 4 years and 9 months before the complaint was served. However, the judge considered SOL to run not as from the time of the sale of shares but when these had reached their maximum value because of the insider information, this happening five years and two months before Mr Alierta was notified of the judicial action.

This case was widely debated as it was the first of several cases where high-level, well connected and powerful entrepreneurs were "saved" by favourable interpretations of the law.

3.3 RELATIVE AND ABSOLUTE SOL

Notwithstanding the differences in the length of limitation periods among the six countries considered, most of them provide for both relative and absolute statutes of limitations. Relative statutes are the basic terms, independent of the causes of suspension and interruption; absolute SOL are the maximum terms that can be reached, including causes of suspension and interruption.

The only country that does not provide for absolute SOL is Spain, where relative SOL are not followed by any other term; so, if a trial begins before the expiry of a limitation period, it is bound to be concluded without becoming statute barred.

Romania has the wider gap, where absolute SOL double the relative ones²⁶; Bulgaria and Portugal²⁷ add half of the relative SOL to determine the absolute SOL; Italy adds a quarter; Greece adds different amounts based on the different qualification of the offence (it adds half for petty offences; more than a half for misdemeanours; one third and one fourth for the two kinds of felonies envisaged).

Researchers focusing on Portugal have provided an example of what the actual length of a criminal

case would be when adding the main suspension causes without providing for an absolute SOL.

CRIME: BRIBERY	SOL
Relative SOL	15 years
Appeal against a conviction	+ 7.5 years
Case of exceptional complexity	+ 5 years
Appeal before the Constitutional Court	+ 10 years
Crimes committed by a habitual criminal	Double of the relative SOL
TOTAL	37.5 YEARS



ITALY AND SUBJECTIVE ABSOLUTE SOL

Italy has a unique regulation concerning absolute SOL. As said, the general rule provides for the addition of a quarter of the relative SOL. However, the law reform of 2005 introduced some tiers of subjective qualifications of the accused. There are now five classes of absolute terms.

KIND OF CRIME OR SUBJECTIVE QUALIFICATION	ABSOLUTE SOL (COMPARED TO RELATIVE SOL)
Offences with no relative SOL ²⁸ or crimes under articles 51, par. 3bis and 3quater ²⁹	No absolute SOL
General rule (crimes committed by an uncensored person or a simple recidivist)	+1/4 of the relative SOL
Crimes committed by an aggravated recidivist	+ 1/3 of the relative SOL
Crimes committed by a repeated recidivist	+ 2/3 of the relative SOL
Crimes committed by a habitual criminal	Double of the relative SOL

The establishment of conditions related to the qualification of the accused has been criticised by many experts: from a procedural perspective, this subjective qualification does not affect the length of judicial proceedings and thus does not make real sense in practice.

²⁵ The sum was 220 million pesetas, equivalent to more than 1,300,000 Euro.

²⁶ Article 154 paragraph 4 of the Romanian Criminal Code

²⁷ Article 121 paragraph 3 of the Portuguese Criminal Code. Portugal provides an exception for crimes sanctioned with a relative SOL below two years: in these cases the absolute SOL doubles the relative one.

²⁸ These are crimes sanctioned with life imprisonment.

²⁹ Crimes investigated by the Antimafia National Directorate concerning criminal organisations.

3.4 CAUSES OF SUSPENSION AND INTERRUPTION

In most jurisdictions where SOL exist, SOL can be suspended or interrupted in specific circumstances. In most cases, it is thanks to these causes that judicial proceedings can be completed despite short limitation periods.

As the table shows, some circumstances can lead to either an interruption or suspension of the limitation period in most countries in question, for example in case of specific steps during the trial or when some legal obstacles prevent its prosecution. Surprisingly, MLA requests and international arrest warrants are rarely considered as causes for suspension or interruption.

In Spain, the absence of an absolute SOL is completed by a single cause of interruption that suspends the limitation period when a judicial procedure

has begun against an accused (the moment he is formally investigated).

Portugal has a longer list of causes of suspension, that includes the period after the indictment while the criminal procedure is still pending (three-year suspension) and the impossibility to notify a conviction to a defendant judged in absentia. Greece provides for additional causes for suspension since both substantive and procedural criminal laws expressly mention specific situations where the prosecution may not commence or continue. For instance, when the decision of the criminal trial depends on another case for which the prosecution has already been initiated, the former is postponed until the decision for the latter becomes irrevocable. The postponement of the trial hearing results in the suspension of the statute of limitations until the decision on the preliminary issue becomes irrevocable.

Common causes of suspension and interruption ³⁰	Bulgaria		Greece		Italy		Portugal		Romania		Spain	
	S	I	S	I	S	I	S	I	S	I	S	I
The alleged offender evaded justice	-	-	X ³¹	-	-	-	X	X	-	-	-	-
The alleged offender committed other crimes of the same nature	-	-	-	-	-	-	-	-	X	-	-	-
Steps in the criminal proceedings (such as the beginning of trial)	-	X	X	-	-	X	-	X	-	X	-	X
Legal obstacles to the initiation or continuation of prosecution	X	-	X	-	-	-	X	-	X	X	-	-
MLA request	-	-	-	-	-	-	-	-	-	X	-	-
Immunity or other statutory barriers to investigation or prosecution	-	-	X	-	X	-	X	-	X	-	-	-
Referral of the case to another court or to additional investigations	-	-	-	-	X	-	X	-	-	-	-	-
International or European arrest warrant	-	-	-	-	-	-	-	-	-	X	-	-
Notification of a procedural act to the alleged offender	-	-	-	-	-	-	-	X	-	X	-	X
Legitimate impediments of the parties or their attorney	-	-	-	-	X	-	-	-	X	-	-	-
An order confirming the arrest of the alleged offender	-	-	-	-	-	X	-	-	-	X	-	-
Interrogatory by the public prosecutor	-	X	-	-	-	X	-	-	-	-	-	-

3.5 COMPARATIVE LENGTH OF SOL

The table shows a certain uniformity as to the length of SOL in the countries included in the report. There are two relevant exceptions: one is Italy, where SOL for some specific crimes are comparatively much shorter and not long enough to allow the judicial system to complete criminal proceedings before the expiry of the limitation period. The other non-aligned country is Spain where absolute SOL are absent: in Spain, some limitation periods seem short though, in practice, they only run until the indictment of the accused person at the beginning of the judicial case, when they are interrupted. Other grounds for interruption occur at later stages of the proceedings.

Corruption-related crime ³²	Bulgaria		Greece ³³		Italy		Portugal		Romania		Spain
	R	A	R	A	R	A	R	A	R	A	R
Active Bribery	10	15	15	20 ³⁴	6	7.5	15	22.5	8	16	10
Passive Bribery	10	15	15	20	6	7.5	15	22.5	8	16	5
Bribery for acts contrary to office duties	10	15 ³⁵	15	20	10	12.5	15	22.5	8	16	
Corruption in judicial acts			15	20	12	15	15	22.5	8	16	5 or 15
Extortion by public official	15	22,5	15	20	12	15	10 or 15	15 or 22.5	8	16	
Embezzlement	10	15 ³⁶	15	20	10.5	13.12	15	22.5	8	16	10
Abuse of authority	10	15 ³⁷	5 ³⁸	8	6	7.5	15	22.5	8	16	5
Money laundering	10	15 ³⁹	15	20	12	15	15	22.5	8	16	10

³⁰ This list of causes of suspension and interruption is not exhaustive.

³¹ This suspension occurs because the prosecution may not commence or continue

³² This table lists relative SOL (R) and absolute SOL (A).

³³ As to Greece, the table shows SOL for felonies.

³⁴ Law 1608/1950 on Financial Crimes Against the State provides for aggravating circumstances, in which case these terms may be extended to twenty and twenty-five years respectively, where the perpetrator intends to gain profit to the detriment of the State's property. This provision does not only apply to active bribery but also to passive bribery, bribery of judges, and embezzlement in the public sector.

³⁵ Terms are fifteen (relative) and twenty-two and a half (absolute) for crimes classified under article 282.5 in conjunction with article 282.2 of the Criminal Code.

³⁶ See previous note with longer periods for aggravated crimes, depending on circumstances.

³⁷ See previous note.

³⁸ As for Greece, the offence of "breach of duty" is considered in place of "abuse of authority".

³⁹ See previous note. The longer limitation periods for this crime are fifteen and twenty-five years, respectively

NATIONAL IMPLEMENTATIONS OF SOL REGULATIONS

SOL REGULATIONS CAN BE AFFECTED BY SPECIFIC, RELEVANT PROVISIONS OR PRACTICES ADOPTED AT NATIONAL LEVEL THAT CAN CONTRIBUTE TO ALTER THE EFFECTS OF THE GENERAL FRAMEWORK.

4.1 DISCRETION OF THE JUDGE

One of the main reasons behind the extensive reform of SOL regulations in Italy in 2005 was the excessive amount of judicial discretion in determining which class a crime was to fall in: based on the aggravating and extenuating circumstances of the crime, judges could set the sanction applicable to a case, thus making this fall within a given class of crimes or another (SOL could be five years longer or shorter depending on such class).

Italy has now reviewed its legislation and, despite the fact that the laws on SOL are strict in most countries, there are still some cases where a judge's discretion can determine whether or not a case becomes statute barred.

In Spain, the qualification of an offence in its ordinary form rather than its aggravated one changes the scenario of the SOL, which can even double. Another case where a wide discretion is retained in the judges' hands occurs in case of continuous crimes and the decision over the "dies a quo" of the crime (and the SOL indeed).

Portugal has an unusual procedure concerning crimes sanctioned with less than five years: an agreement between the public prosecutor, the judge and the defendant can suspend the trial.



EXPIRY OF LIMITATION PERIODS IGNORED (ROMANIA)

On September 8, 2006, the businessman Dino Patriciu, the manager of SC Rompetrol⁴⁰, was charged by the DIICOT (Directorate for Investigating Organised Crime and Terrorism) with seven offences: embezzlement, money laundering, association to commit a crime, market manipulation through transactions or trading orders, disclosure of privileged information and initiation or establishment of an organized crime ring⁴¹. The case was extremely relevant at high levels, involving former Minister Sorin Pantis and former Senator Sorin Rosca Stanesco.

The criminal case against Patriciu was closed following his death in August 2014 (a civil case continued) and, during the last hearing in September 2014, the DIICOT asked the Court to close the case against Pantis and Stanesco, since the case had become statute barred in 2011: they were convicted nonetheless to two years and four months and to two years and eight months, respectively.



CHANGE IN THE LEGAL CLASSIFICATION OF A CRIME AFTER SEVEN YEARS, FOLLOWED BY A CONVICTION? CHECKED. CASE STATUTE BARRED? CHECKED (ROMANIA)

S.V., the president of Jiu Valley Miner Unions League and of the Confederation of Mining Unions in Romania other than a member of Parliament from 2000 to 2004, was indicted in May 2006 for abuse of authority to obtain money, goods or other undue advantages, for continuous forgery under private signature and continuous abuse of office. The trial was delayed on the account of over forty terms, because of countless exceptions raised by the defendant until February 2010, when the accused was sentenced to three years' imprisonment and about 50,000 euro in damages. On appeal before the Bucharest Court of Appeal, the Court held on 22 April 2011 that the change in the legal classification of the crime had closed the criminal proceedings and that the case had become statute barred.



IS IT POSSIBLE TO STOP DILATORY TACTICS? THE BPP CASE (PORTUGAL)

The Banco Privado Português case refers to a number of financial misdemeanour proceedings where the defendant, João Rendeiro, and other administrators of the bank were sentenced to pay, in 2014, total eleven million euro to the financial regulators (the Bank of Portugal and the Portuguese Securities Market Commission), due to a large number of violations of the Law on Securities.

These crimes were close to becoming statute barred (November 2016), after which the accused bank administrators could have reprised their administrating roles in financial institutions. The only way to avoid the expiry of the limitation period was to have the Bank of Portugal impose sanctions and the CMVM decision become final. The main defendant and the remaining administrators thus raised all types of nullities and unconstitutionality.

In face of all these dilatory tactics, the court decided to put an end to the succession of complaints and new arguments, holding that: "It is evident that the defendant, through the number of complaints lodged, and knowing that this procedure does not admit an appeal to the Supreme Court, and being unsatisfied with this Court's decision, will do everything he can to avoid this decision becoming final".

This court decision is a good, but rare, example of using civil procedure mechanisms to stop abusive delays by defendants.

⁴⁰ Rompetrul Group is a prominent Romanian oil and gas company.

⁴¹ The prosecutors maintain that, in the period September 1999 — November 2001, he repeatedly appropriated the amount of 85 million USD from the EPSA Agreements and owed to the state budget and which he dealt in the interest of Rompetrol International Ltd and The Rompetrol Group BVB Netherlands.

4.2 DISCRETION OF THE PROSECUTORS

To deal with the 'threat' of SOL, public prosecutors sometimes attempt to requalify offences in order to enjoy more favourable limitation periods. In Romania, a crime may be prosecuted as part of a continuous crime: when an offence is continuous, SOL runs as from the day when the action or inaction ceases or the last act is performed (when the crime is habitual). This qualification can theoretically postpone the start date of SOL. Also in other countries, such as Portugal, this can happen though it is considered a rare possibility, or else it would jeopardise the reputation of practitioners.

Another crucial issue where prosecutors can play a relevant role is the practice of speeding up a case or renouncing to go ahead with it based on their decision and on their active, discretionary actions.

Some countries provide for a strict framework on this issue: prosecutors must prosecute cases, regardless of their SOL-foreseeable outcome: the principles of legality and mandatory prosecution are laid down in almost all the countries considered (except for Portugal), though the principle is not implemented everywhere in practice. Practitioners from Italy and Bulgaria are concordant that it is a common practice that prosecutors choose not to prosecute cases that have no real chances to be adjudicated before SOL terms expire. Romania has a similar legal framework: prosecutors have an obligation to start a criminal investigation but they can decide to waive action if they believe there is no public interest in pursuing it. This is clearly the case when starting a procedure that cannot come to an end. Practice shows how prosecutors often choose to let an offence become statute barred.

Portugal is a unique case in this respect. According to article 277 of the Code of Criminal Procedure, if criminal liability cannot be established

in Court because of SOL, public prosecution is prevented from proceeding with the investigation. The same thing happens with proceedings at an advanced stage of the investigations: based on the principle of procedural economy and the prohibition to pursue useless acts, the public prosecutor's office should decide for its dismissal.

On the other hand, some countries lay down rules that allow for proceedings to be labelled as urgent and to speed up schedules and activities to avoid the expiry of limitation periods.

Marking a case urgent when there is a risk of it becoming statute barred, is a very common judicial practice among Greek prosecutors.

A Greek law⁴² also provides for setting the trial date for corruption-related offences with absolute priority, not allowing for any adjournment. A recent anti-austerity strike by Greek lawyers which lasted for approximately eight months, paralysed the country's judicial system; however, cases close to their limitation period were the only ones that were tried. Quite obviously, there were fears that a number of cases would become statute barred.

Portugal has a similar practice that allows for the prioritisation of proceedings about to become statute barred⁴³: prosecutors can thus assign higher priority thereto, labelling case records as urgent. A prosecutor in charge of a case has an obligation to duly end it before SOL terms expire: when a case reaches its SOL, the prosecutor must report this to his superior, who will assess if some responsibilities are to be ascribed thereto for this outcome.

4.3 FURTHER TIME-RELATED LIMITS

The excessive length of some necessary phases of the judicial proceedings is one of the main statutory factors leading to the frequent expiry of limitation periods. During the trial and even before it starts, delays can occur to extend the time needed to carry out judicial proceedings. One of the main concerns in some legal systems is that a case is already bound to become statute barred when it comes to court: this can happen sometimes because of the late discovery of the crime but it is more often caused by unjustifiable extended investigations.

The time for investigations is usually set by law: in Romania, defendants can only appeal for review to speed up proceedings when both investigations and criminal trials are not held within a reasonable time. Italy and Portugal have deadlines for investigations that are not strict and can be prolonged. In Italy, there is an anomalous practice at the prosecution office: cases are kept on hold without being dismissed or brought to court until they become statute barred⁴⁴. In Greece⁴⁵, the law provides that the preliminary investigations for these offences must be completed within two months whereas the main investigation must be completed within four months. The latter can be extended by two months, though it usually lasts up to one or even two or more years.

4.4 SPECIAL CATEGORIES

Some categories of defendants are granted special treatments because of their position: it is the case of Prime Ministers, members of government or MPs. In some countries, this leads to immunity or to the need for a special authorisation (for example by Parliament) to investigate and prosecute them.

Therefore, some countries provide for suspensions of SOL which start running again when the mandate of the elected person is over, though this affects the running of the absolute SOL. This is one of the reasons why Portugal created longer SOL-regimes for corruption-related crimes which often involve politicians at any level.

Bulgaria has amended its criminal code to introduce an exclusion from SOL of crimes committed by the members of the Communist Party's governing bodies from September 9th, 1944 to November 10th, 1989.

As already mentioned, Italy is a unique case, having introduced longer SOL for recidivists.

⁴² Article 4 of Law n.4022/2011.

⁴³ Public Prosecutor's Office Directive of November 24th, 2015, executing Criminal Policy Law n.72/2015.

⁴⁴ Practitioners confirm that the large majority of cases becomes statute barred during the investigation phase.

⁴⁵ Law 4022/2011 on Adjudication of Corruption Offenses Committed by Politicians and Senior State Officials, Cases of Great Social Importance and Major Public Interest as well as Other Provisions



THE SPECIAL CASE OF MINISTERS IN GREECE: THE CASE OF AKIS TSOHATZOPOULOS

The case of Akis Tsohatzopoulos, the co-founder of the Greek socialist party PASOK, a former Minister, in particular Minister of Defence, for Greek socialist governments for over thirty years, is one of the most notorious corruption scandals in Greece.

In October 2013, in a trial that lasted approximately five months, the Athens Three Member Court of Appeal for Felonies found Tsohatzopoulos guilty of setting up a complex money laundering scheme to conceal, through off-shore companies, millions of dollars he had received in bribes from a number of defence contracts involving submarines and weapon systems. Tsohatzopoulos was sentenced to twenty years' imprisonment and appealed his conviction. He was also sentenced to five and a half years' imprisonment and a fine of EUR 210,000 for failing to report the purchase of a luxurious house near the Acropolis, one of several properties connected with such money laundering activities.

Unfortunately, the case against the former Minister for passive bribery with the aggravating circumstances of Law 1608/1950 (which provides for the harsher punishment, up to life imprisonment of the perpetrator of a number of crimes against the State's financial interest) was declared inadmissible, given that the limitation period established by the Constitution for the initiation of a criminal case against a current or former member of the government had already expired. More specifically, under Greek Constitution and law⁴⁶, Parliament can prosecute a current or former member of the Government no later than the end of the second regular session of the parliamentary term commencing when the alleged offence is presumed to have occurred. After this deadline neither Parliament nor other state bodies such as the prosecutor, the investigation judge or the judicial council, can initiate a legal action, since the crime is no longer punishable.

However, Tsohatzopoulos was charged with and found guilty of money laundering, a crime not considered to be committed in the performance of a Minister's duties and therefore not subject to the five-year SOL provided for such crimes. In contrast, it was found subject to the fifteen-year limitation period provided by the Criminal Code for felonies, over which the common criminal courts have jurisdiction.

This case shows an inexplicable differentiation in SOL between crimes committed while performing Minister's duties and crimes committed outside of that function, with the former enjoying more favourable conditions. Since the passive bribery charges were dismissed, Tsohatzopoulos was found guilty only of money laundering; the first offence provides for life imprisonment of the perpetrator who damages the State's interest, while the second does not.

⁴⁶ In particular, article 86 paragraph 3 of the Constitution and article 3 paragraph 2 of Law 3126/2003. The five-year limitation period for misdemeanours and felonies committed by Ministers in the performance of their duties referred to in article 3 of Law 3126/2003 on Criminal Responsibility of Ministers was amended, after having been heavily criticised, by article 1 of Law 3961/2011 on Amendment of Law 3126/2003 on the Criminal Responsibility of Ministers and Other Provisions, and is now subject to the main SOL set out in articles 111 and 112 of the Criminal Code.

STATUTES OF LIMITATIONS AND EU FINANCIAL INTERESTS

Decision C-105/14 of the European Court of Justice passed on 08/09/2015 (also known as the Taricco case⁴⁷) ordered Italy to disapply its national provisions on SOL for they did not allow for the prosecution of crimes damaging the financial interests of the European Union. The case concerned a possible violation of VAT by Mr Taricco and some associates; the Italian Court of Cuneo asked the EU Court of Justice whether Italian law violated EU law by granting impunity to individuals through its SOL regulations.

Considering that the so-called PIF Directive has not been approved, we asked national researchers and the experts we interviewed to consider in this section a provisional definition of EU financial interests, meaning “all revenues and expenditures covered by, acquired through, or due to: a) the Union budget; b) the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them”.

5.1 CONSIDERATIONS ON THE TARICCO DECISION

The researchers and national experts we interviewed had mixed feelings about this decision. Most of them acknowledged the reasoning behind the decision of the Court, this mirroring a serious concern about the risk of impunity caused by national regulations and a direct damage to EU financial interests. On the other hand, several arguments were raised concerning both the content and the form of the decision.

One of the main criticisms lies in the principle that national SOL laws are enacted after weighing the different interests involved: on the one hand, the State’s interest in effectively prosecuting and punishing crimes and, on the other hand, citizens’ interests in not being subject to investigations or trial for an excessive amount of time. The Taricco judgment intrudes upon the State’s national policy by ordering it not to apply its absolute SOL and it is a strong imposition upon national policy.

Even assuming we agree with the Court’s rationale, the way in which this European institution addressed a country’s atavistic problem (this is peacefully the case with SOL in Italy) cannot be considered the best possible way. There is a shared consensus that EU should exercise pressure on Italy (and eventually on other Member States) to review its SOL legislation, a process which should be made at national level, considering the local framework.

At a juridical level, the Court failed to address the substantial or procedural nature of SOL in Italy, which is crucial for the retroactive effect of the decision or its validity on ongoing proceedings which have not yet become statute-barred. Most practitioners consider SOL as substantial and claim that EU decisions cannot be applied to ongoing cases. Since only few practitioners consider SOL a procedural issue, experts think Italy should not accept such limitation to its national sovereignty and should activate the “counter limits doctrine” (a set of constitutional provisions resistant to EU regulations).

⁴⁷ The full text of the decision is available at this link: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=167061&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=907133>.

5.2 HARMONISATION OF SOL ACROSS THE EU

The disparity among Member States in relation to their SOL regulations is an issue that is considered by the permanent talks over the potential need to harmonise criminal law across the EU.

Whether such harmonisation should begin with criminal principles or with procedural issues is still under debate. Turning to SOL only, different views have been expressed by our experts.

Opinions differ because some experts (Bulgaria) believe that the criminal law systems of Member States are different in so many respects (offences, procedures, etc.) that limited provisions could be implemented only through a specific EU Directive. Some experts think that the leveling of SOL regulations across Member States would be positive even if this is not a priority in some countries (Spain), while other countries (Romania) consider it a necessity, in particular in relation to VAT, considering that this is one of the main sources of the EU budget.

Some experts (Greece, Italy, Portugal) endorse the idea of a wider harmonisation of substantial and procedural criminal laws, a process that still needs some time to develop. A first step could be represented by the enhanced implementation of existing fundamental principles and the repeal of national laws contrasting directly therewith.

5.3 STATUTES OF LIMITATIONS AND VAT FRAUDS

Value added tax is one of the sources of income of the EU budget, and all related frauds are a natural concern for EU institutions.

Based on our analysis of national frameworks and of practitioners' opinions, there is no concern that a case similar to Taricco might occur in their countries because of the long SOL for this kind of crime.

Italy is a notable exception: SOL are not long (seven and half years for absolute SOL) and the late discovery of crimes contributes to high levels of impunity for tax evasion. Considering that most tax frauds are revealed when tax declarations are reviewed by fiscal authorities a few years later, most of these cases come to Court when they are very close to becoming statute barred.

Greece is in a strange position because, despite sufficiently long SOL for VAT fraud (at least with regard to felonies) that would not inhibit their prosecution, some cases that have recently come to light show a national widespread problem in their detection. According to the 2015 Eurobarometer, at least half of companies in Greece believe that tax fraud and non-payment of VAT are the most widespread practice in the country⁴⁸.



THE VESELIN GEORGIEV CASE (BULGARIA)

Veselin Georgiev, the former executive director of the National Road Infrastructure Fund, was prosecuted for abuse of funds granted via the Eurofund initiative⁴⁹ and was accused of embezzling almost 100,000 BGN (over 50,000 Euro). Veselin Georgiev granted his brothers Boyko and Emil 120 million BGN (over 60 million Euro)⁵⁰.

The limitation period for the crime, committed in 2007, expired in 2014. Delays occurred because of the defendant's failure to appear in Court and a never-ending pre-litigation phase, with proceedings set to start in March 2012. Multiple resubmissions of the case followed, also because of difficulties in establishing the moment when the crime had been committed.

When the case reached the court in 2015, it became clear, right from the very first court session, that the absolute limitation period had expired for two of the perpetrators and charges were dropped for both.



VAT FRAUDS. THE "SCANDAL OF SCANDALS" IN GREECE

This scandal was revealed in 2001 when the Financial Crime and Economic Unit (SDOE) conducted an ordinary audit of a company located in the area of Nea Moudania. The outcome of the audit was that the company, supposed to be active in exports to European countries, was, in fact, an office with just a phone. Surprisingly, its owners had received astounding amounts of money in VAT returns. The matter was further investigated and it was found that several similar companies in Thessaloniki had been producing fictitious invoices to show intra-EU exports of various products that had never occurred and had been receiving large amounts of money from the return of taxes, since the competent tax authorities had failed to conduct proper audits. Many cases have now been adjudicated by the criminal courts of Thessaloniki and a few tax officers have been found guilty of bribery and infidelity in the public service and have been convicted even to life imprisonment while others have been jailed.

Although the exact damage caused to the Greek state has not been calculated yet, it is estimated to amount to millions of euros. Although the scandal is still being investigated, an astounding number of cases that took place more than fifteen years ago, at the end of the 1990s (1998-2000), are now about to become statute barred.

⁴⁸ European Commission, Flash Eurobarometer 428, Report on Business Attitudes towards Corruption in the EU, 43 (2015).

⁴⁹ Other defendants of the case were Radoslav Kolev, the chairman of the Student Community Centre "St. George" in Plovdiv and Emiliya Popova, the Director of the associations "Regional and European developments of Karlovo" and "Evridika 98".

⁵⁰ Because of this scandal, the European Commission blocked temporarily 115,4 million Euro from the ISPA program and 50 million euro from the Phare program.

5.4 EUROPEAN COURT OF JUSTICE AND SOL LEGISLATION

A major point of discussion concerns the role taken by the European Court of Justice in this issue and the nature of the act taken by a specific EU institution. The issue is whether the nature of a decision of this magnitude is legal, acceptable and reasonable at the same time.

Experts from five countries disagree with the choice of action of the EU court which, in practice, does not limit its power to the specific case it rules on; rather, it essentially demands the relevant national court to disapply a national provision in a criminal law matter.

Except for the majority of Spanish experts, who consider such overruling of a national provision as acceptable in the specific Taricco decision and in similar cases where national provisions do not allow for the prosecution of crimes damaging EU financial interest, all other experts do not agree with such Court intervention. In particular, experts from Greece are highly skeptical towards such intervention: it is considered by many as an act of judicial activism that violates the defendant's rights and is against the Constitution.

Other responses share their disapproval of the form used by the EU institution: the principle of legal certainty in criminal proceedings is often mentioned as the primary reason why this decision is not the best option to express disagreement with national legal provisions, particularly in the Italian legal framework where the Taricco case represents only the tip of the iceberg and not an isolated case. A widely-endorsed comment is that the EU has all the reasons to require radically different outcomes for judicial proceedings concerning VAT frauds and that it is entitled to require (and maybe even force) Italy (and other, possible, non-compliant members) to amend its legislation to guarantee the prosecution of these criminal behaviours.

Whilst waiting for a (hopefully soon) revision of SOL national law, the EU Court will probably be asked to rule on similar cases and will have to comply with its previous judgment. Article 325 of the Treaty on the Functioning of EU acts as a gateway for the active intervention of EU institutions on criminal matters, with the Taricco decision simply reinforcing it.



ITALY AND ITS SYSTEMIC ISSUE WITH SOL: A PLURALITY OF CRIMES BECOMING STATUTE BARRED.

Some crimes are most prone to becoming statute barred but the list of cases whose limitation period is subject to expiration is long and shows how the entire framework needs to be strongly reviewed.

Among the political cases it is worth mentioning that of the former president of the Milan Province, Filippo Penati, who benefited from the law reform in 2012 and had the charges against him become statute barred in a large corruption case. Penati initially claimed that he would give up his right to enforce the limitation period in order to be acquitted on the merits but then changed his mind. In another case, the former governor of the Molise region, Michele Iorio, was sentenced to one and a half years of imprisonment for abusing his position but the offence was held statute barred by Cassazione, which even anticipated the starting moment of the SOL from the time of payment of a service to two companies back to the previous moment when the region assigned the service thereto.

In the sports field three famous cases can be mentioned: the so-called Calciopoli, the match-fixing and doping cases. First, Calciopoli was a tremendous scandal which came out in 2006 when large investigations revealed a system of powers among football clubs and league associations that exercised an un-

due control over the scores and management of the Italian football league. The scandal led to the resignation of several managers, and most executives of both the Serie A League and clubs, along with some referees, were found guilty of their illicit maneuvers by the Special Sports Court. Most defendants were convicted by first and second instance courts but their cases became statute barred later on, including those of two of the most famous actors of the scandal, Luciano Moggi and Antonio Giraudo⁵¹. Second, the match-fixing case of 2011 when a similar situation occurred, with trials before the Sports Court already having been decided but with only few of them leading to criminal proceedings: most of them started in mid-2016 and their SOL terms will probably expire in 2018. Furthermore, in the doping case of 2002, Doctor Riccardo Agricola was convicted by the first instance court in 2002 but his case became statute barred in March 2007.

In the health sector two of the biggest scandals were plagued by limitation periods: the “killer valves” case concerned a doctor who was accused of bribery to acquire faulty heart valves which were then implanted into 34 patients (two of them died). The case against the doctor became statute barred. The same happened in the proceedings concerning the so-called “Horror Clinic”, where Doctor Pierpaolo Brega Massone was sentenced to life for conducting systemic useless surgeries on elderly patients that caused several deaths. These surgeries were not necessary from a medical perspective and they were performed to commit fraud against the National Health Service, yet the fraud charges became statute barred.

Some major environmental disasters ended or will soon end with no consequences for their perpetrators because of the expiry of the corresponding limitation periods. The most famous case is that of the Eternit company regarding the use of asbestos in a factory that caused an environmental disaster and the severe illness of hundreds of employees and citizens due to the lack of precautionary safety measures. The chairman and the CEO were convicted by the first and second instance courts but their offences were held statute barred by Cassazione at the third instance court level. Compensation to victims was also annulled.

Two cases represent a paradox:

1) Giulio Cesare Morrone murdered his wife in 1990 and pleaded guilty in 2012 (twenty-two years after the fact). The law in the 1990s included aggravating and extenuating circumstances in the calculation of the SOL. The prosecutor asked for thirty years’ imprisonment (sixteen years of basic crime plus aggravating circumstances). The first and second instance courts did not acknowledge the aggravating circumstances, and as a result the crime became statute barred while the murderer was acquitted despite his confession.

2) On June 29, 2009, thirty-three people died in a railway crash in Viareggio. Investigations on the people responsible for the disaster started immediately afterwards: after four years, thirty-three people were indicted for several crimes (culpable fire, culpable murder). The first instance case is still pending and culpable fire and culpable injury charges are about to become statute barred. Despite the fact that this crime was detected early, there is no real chance for the victims to see perpetrators being judged by the court.

⁵¹ Fun fact: one of the few people who gave up his right to enforce SOL terms, the referee Massimo De Santis, was one of the few people who was convicted with a final criminal decision.

5.5 EUROPEAN COURT OF JUSTICE AND SOL LEGISLATION

Considering that the so-called PIF Directive has not been approved and enacted yet, for the purposes of this report a provisional definition of financial interests is used, these meaning “all revenues and expenditures covered by, acquired through, or due to: a) the Union budget; b) the budget of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them”.

A comparison of crimes falling into the provisional definition of PIF crimes is used.

Corruption-related crime	Bulgaria		Greece ⁵²		Italy		Portugal ⁵³		Romania		Spain
	R	A	R	A	R	A	R	A	R	A	R
VAT fraud			5 or 15	8 or 20	6	7.5	5 or 10	7.5 or 15	8	16	5 or 10 ⁵⁴
Embezzlement against European Union	15	22	5 or 15	8 or 20	6	7.5	15	22.5	8	16	5
Unjust obtaining of supplies against EU	3	4.5 ⁵⁵	5 or 15	8 or 20	6	7.5	15	22.5	8	16	5
Fraud against EU			5 or 15	8 or 20	6	7.5	15	22.5	8	16	5
Corruption of EU public officials	10 or 15 ⁵⁶	15 or 22.5	5 or 15	8 or 20	6	7.5	15	22.5	8	16	10
Non-communication of conflicts of interest against EU					6	7.5	15	22.5	5	10	5
Cigarette smuggling	10	15	5	8	5	6.25	5	7.5	8	16	1 to 5 ⁵⁷
Currency counterfeiting	15	22.5	5 or 15	8 or 20	12	15	15	22.5	8	16	15
Misuse of EU funds			5 or 15	8 or 20	6	7.5	5 or 10	7.5 or 15	5	10	5
EU-funds procurement violations			5 or 15	8 or 20					8	16	5

The limitation terms provided for crimes that might, whether or not directly, affect EU financial interests are consistent with SOL provided at Member State-level for general corruption-related crimes. This analysis shows that an approach focused on contrasting SOL effects only on EU-related crimes might not be the most sensible approach; a wider approach aiming at changing how the national SOL framework is structured represents a better option, which is also probably easier for Member States to accept.



TAX FRAUDS AS INDEPENDENT CRIMES? MAYBE. THE CASE OF CARLOS FABRA (SPAIN)

Carlos Fabra, the former president of the provincial council of Castellon, was charged with several crimes, among which tax fraud, in 2003. Ten years later he was sentenced to four years of imprisonment.

However, the court of Nules, where he was convicted, did not sentence him for the crimes committed from 2000 to 2003, because they had become statute barred. This happened because no formal accusation was made and SOL terms were not interrupted before the investigations were completed and, complying with the doctrine of the Spanish High Court, tax fraud was not considered a continuous crime.

⁵² First term is related to misdemeanours; second term is related to felonies.

⁵³ Second terms are those provided for aggravated forms.

⁵⁴ Depending on the amount of the fraud.

⁵⁵ Crime is defined as “False statements or lack of information to secure EU funds”.

⁵⁶ First term is applicable to a list of classified crimes, second term to remaining crimes.

⁵⁷ Depending on the value of the goods.

CONCLUSIONS AND RECOMMENDATIONS

Our analysis of six national legal systems and practices on statutes of limitations shows a plurality of approaches in the field, with different outcomes in practice. Member States apply different approaches to regulate the expiry of limitation periods. Most of them have dealt with large scandals and major cases that have had a relevant impact on society and the public opinion and have somehow remedied legal deficiencies to avoid the proliferation of similar cases. Italy seems to be lagging behind in complying with best practices; it is not surprising that the Taricco decision concerned an Italian court case.

There are three areas where room for improvement is identified and advisable: specific SOL regulations; SOL-related issues; the systemic weaknesses of criminal proceedings.

Except for Italy, which deserves separate consideration and needs a complete, immediate reform of the SOL framework, the legal frameworks taken into consideration in this report are considered effective. The selected cases identified by experts are relevant at national level and have or have had an impact on the community; however, they are often dated or isolated and do not represent a common trend in these countries. In any case, researchers and experts point out existing loopholes in their context that are highlighted by practice and need to be carefully reviewed.

Among the weaknesses, special attention should be paid to the following issues:

1) Corruption-related cases.

They sometimes require more time and tools for investigation, so a special treatment is deemed advisable by several experts.

2) Cross-border cases.

They take considerable time because of their complexity and MLA requests are not always timely replied. Most of the times these requests are not a cause for suspension and, where they are, they can have an impact on absolute SOL.

3) Elimination of special subjective conditions.

In some countries politicians or people in official positions have different SOL compared to the general rule.

4) Focus on the causes of suspension and interruption rather than on the length of SOL.

The length of SOL is rather consistent and similar among countries but differences arise in relation to the causes of suspension and interruption that can obstruct prosecution and interfere with the correct conduct of criminal proceedings.

5) Investigation times.

A number of proceedings become statute barred during the investigations or because of the time dedicated thereto. Although specific time limits are set, investigations are often prolonged or ignored.

The following issues are not strictly related to SOL but raise concerns according to several experts and practitioners:

1) Lack of relevant statistics.

In most of these countries, statistics are not collected or available in relation to the numbers and categories of statute-barred proceedings. This shortage jeopardises the ability of the system to understand if and where there are problems related to the amount of cases not decided on their merits.

2) Harmonisation of EU criminal procedures.

Although each country has its specific features and connotations that make it hard to create uniform criminal proceedings, some issues should be more harmonised and integrated. The long-awaited introduction of the European Public Prosecutor could create benefits in multi-country cases.

Although the expiration of limitation periods is not causing problems across Europe, rather only in some countries or under specific circumstances, a common trend emerging from our analysis is the average excessive length of criminal proceedings. In countries where proceedings are too long and SOL are too short or there is no valid list of causes of suspension and interruption, this represents a major problem leading to impunity. Strategies to reduce the length of proceedings might include the allocation of more resources to the public prosecution and to the court to speed up cases, sanctions for delays caused by any party involved in the proceedings, a possible de-criminalisation of offences and the promotion of alternative dispute resolution mechanisms to lighten the caseload of courts.

As regards VAT frauds and the damage to EU interests caused by weak or ineffective SOL regulations, most experts agree that the EU should intervene in relation to Member States' substantial aspects of criminal law by exercising pressure in order to make them remedy their deficiencies at a legislative level, instead of intervening on single, ongoing criminal cases.

ANNEX TO THE REPORT

This report compares the legal regulation of SOL and its implementation in practice in six EU Member States. To complete the report, researchers from such six countries completed a legal research project, analysed cases, requested statistics to the relevant institutions, selected and interviewed major national experts on the issue. They submitted complete national reports based on common questionnaires provided by the Italian lead researcher.

LIST OF EXPERTS INTERVIEWED FOR THIS REPORT⁵⁸

BULGARIA

- 3 lawyers, members of the Sofia Bar Association, with extensive practice in the criminal field and expertise at all court levels;
- 3 legal researchers, from Law Faculties of the Sofia University “St. Kliment Ohridski” and Veliko Turnovo University “St. Kiril I Metodii”;
- 2 Judges from the Supreme Court of Cassation;
- 2 Prosecutors from the Supreme Prosecution of Cassation.

GREECE

- Ms. Raikou, Anti-Corruption Prosecutor in Athens;
- Mr. Rakintzis, former General Inspector of Public Administration;
- 2 Representatives from the Legislative Office of the General Secretariat for the Fight Against Corruption;
- 2 Inspectors from the Office of the General Inspector of Public Administration;
- A former Supreme Court judge;
- A Court of Appeals judge;
- An investigation judge for corruption crimes;
- A deputy investigation judge for corruption crimes.

ITALY

- Piercamillo Davigo, Magistrate at Court of Cassazione and President of the National Magistrates Association;
- Grazia Mannozi, Professor of Criminal Law at Università degli Studi dell’Insubria;
- Chiara Amalfitano, Professor of European Union Law at Università degli Studi of Milan;
- Stefano Marcolini, lawyer and Professor of Criminal Procedure Law at Università degli Studi dell’Insubria;
- Francesco Viganò, Professor of Criminal Law at Università degli Studi of Milan;
- Enrico Cappelletti, MP;
- Donatella Ferranti, MP and President of the Justice Commission at the House of Representatives.

PORTUGAL

- Luís Rosa, Journalist specialised in criminal investigations;
- Ana Gomes, – Member of the European Parliament;
- Maria José Morgado, Senior Public Prosecutor (Head of the District Public Prosecutor's Office in Lisbon);
- José Albuquerque, Representative of the Union of Public Prosecutors, Researcher;
- Joana Amaral Rodrigues, Researcher of the Faculty of Law of the Universidade Nova de Lisboa (FDUNL);
- Paulo Saragoça da Matta – Lawyer and member of the board of directors of the Association of Criminal Lawyers;
- Maria Paula Gouveia Andrade, Lawyer;
- Jorge Reis Bravo, Senior Public Prosecutor;
- Paulo Ralha, President of the Union of Tax Workers;
- José Tavares, General Director of the Court of Auditors, and Secretary-General of the Council for the Prevention of Corruption;
- António João Maia, Representative of the Council for the Prevention of Corruption and Researcher of the Economy and Fraud Management Observatory;
- Tania Pereira, Professor at the Faculty of Law of the Universidade Católica de Lisboa;
- Caolina Mouraz, Lawyer.

ROMANIA

- Prosecutor's Office of the High Court of Cassation and Justice;
- Superior Council of Magistracy;
- National Bars Union of Romania;
- Ministry of Justice;
- Mădălina Afrăsinie, judge at the Bucharest Court;
- Nadia Cantemir, lawyer and law professor at Universitatea Nicolae Titulescu (Bucarest);
- Angela Ciurea, lawyer and former chief prosecutor at DIICOT (Directorate for Investigating Organized Crime and Terrorism);
- Alic Saiciuc, Magistrate at Superior Council of Magistracy;
- Cristina Banciu, lawyer, former prosecutor and former judge.

SPAIN

- José Luis Fuertes, criminal lawyer;
- Francisco de la Torre, tax inspector and MP;
- María Teresa Gálvez, prosecuting attorney specialised in corruption cases;
- Salvador Viada, prosecutor at Supreme Court;
- Jesús Villegas, examining magistrate;
- Enrique Gimbernat, Professor of Criminal Law at the Complutense University of Madrid.
- Ángela Martialay, journalist in Vozpópuli;
- Juan Pelayo García Llamas, Criminal Magistrate at the Madrid Provincial Court and President of the Third Section at the Criminal Court of Madrid

⁵⁸ Not all the people interviewed for this report authorised the publication of their name.



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