

The Limitation Period in EU Competition Law¹

Professor **Dubravka AKŠAMOVIĆ**²
Assistant professor **Lidija ŠIMUNOVIĆ**³

Abstract

Article examines the limitation periods for imposing and enforcing fines under EU competition law. Addressed topic has great practical significance for effective enforcement of EU competition rules. On one side, rules on limitation period constraint the EU Commission's authority to impose fines for breaches of Article 101 and 102 of TEFU for indefinite time. On other side, rules on limitation period uphold rule of law by ensuring legal certainty and protecting undertakings from indefinite liability. Basic rules regulating limitation period for Competition law infringement are contained in Regulation 1/2003. Article 25 and 26 of Regulation 1/2003 define, among others, starting and ending date of limitation period, acts that suspend or/ and interrupt limitation period, special deadlines for commencement of limitation period in bid rigging cartels, etc. Although those rules are generally clear and precise, different issues arose with regard to proper application of those rules in practice. Such is for example precise determination of starting date of limitation period, type of acts or actions of the Commission that interrupt limitation period, application of Articles 25 and 26 of the Regulation 1/2003 by the national competition authorities, etc. In that context, the purpose of this paper is to provide a detailed and systematic analysis of the relevant provisions in EU law and landmark EU law cases dealing with the limitation period. Such analysis will contribute to research on the topic and provide guidance to legal practitioners in responding to challenges in application of EU rules on limitation period.

Keywords: limitation period, competition infringement, fines, business law.

JEL Classification: K22, K33

DOI: 10.62768/PLPA/2025/14/2/03

Please cite this article as: Akšamović, Dubravka & Lidija Šimunović „The Limitation Period in EU Competition Law”, <i>Perspectives of Law and Public Administration</i> 14, no. 2 (June 2025): 266-282.	Article History Received: 15 March 2025 Revised: 05 May 2025 Accepted: 02 June 2025
---	---

1. Introduction

The paper focuses on the issue of limitation period for imposing fines and for

¹ This paper was created as part of the internal projects of the Faculty of Law of the Josip Juraj Strossmayer University in Osijek entitled Legal certainty, rule of law and effective legal protection in commercial, insolvency, civil and administrative disputes as a prerequisite for continuous economic and social development and project no. IP-PRAVOS-4.

² Dubravka Akšamović - Faculty of Law, Josip Juraj Strossmayer University, Osijek, Croatia, ORCID: 0000-0003-4714-7440, daksamov@pravos.hr.

³ Lidija Šimunović - Faculty of Law, Josip Juraj Strossmayer University, Osijek, Croatia, ORCID: 0000-0003-4753-5590, lsimunov@pravos.hr.

the enforcement of fines for the infringements of EU competition law. It is important and complex legal issue that, in last few years captured the attention of both legal scholars and EU Court.

Limitation period in competition cases has dual function. On one side, it restricts Commissions' punitive power to impose fine. Once the statute of limitation expires, the EU Commission cannot any more impose fine for the competition law infringement. On the other side, limitation period is part of the right to due process. Their purpose is to ensure legal certainty and to protect the parties from indefinite exposure to potential penalties.

Although provisions prescribing the limitation periods in EU law are clear and precise, a determination on whether the Commission is empowered to impose fine or not is not always straightforward. It varies on different circumstances such as the determination of ending date of limitation period, on the beginning of the computation of the limitation period, on acts capable to interrupt the running of the limitation period, etc. Further, it is also doubtful whether limitation period for imposing and enforcing fines also extends to power of the Commission to bring infringement decision? Moreover, it is also questionable are national competition authorities when deciding on the infringement of Article 101 and 102 of the TEFU entitled to apply limitation periods prescribed by article 25 and 26 of the Regulation 1/2003?

In this context, the purpose of this paper is to provide a comprehensive analysis or EU rules and EU Court jurisprudence on limitation period for imposing fines and for enforcement of penalties for the competition law infringements. Special emphasis will be on decisions of EU Court in which EU Court provided valuable guidance to national courts on different issues related to limitation period. The paper will also analyze whether rules on limitation period for imposing fines affect the right of the Commission to bring the infringement decision for the violation of the Article 101 and 102 of the TEFU as well as implementation of analyzed rules by national competition authorities and national courts in the EU Member States.

2. First EU Rules on Limitation Period for Imposing Penalties in EU (Competition) Law

The necessity of regulating the limitation period in EU competition law was initially emphasized by the EU Court⁴. The first Regulation implementing Articles 85 and 86 of the Treaty⁵, so called Regulation 17, did not provide for any rules on limitation periods for the infringement of competition rules. So in case, *Chemiefarma v. Commissio*⁶ in which undertakings, among others, raised the claim that the Commission should refrain from imposing fine because the infringement took place many years

⁴ Van Bael & Bellis, *Competition Law of the European Union*, Sixth edition, Wolters Kluwers, 2021, p. 1212.

⁵ Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty OJ 13, 21.2.1962, p. 204–211.

⁶ Judgment of the Court of 15 July 1970. *ACF Chemiefarma NV v. Commission of the European Communities* (Case 41-69), ECLI: EU: C: 1970:71.

before the Commission initiated proceedings, the EU Court held that the limitation period should be regulated by the Council. With regard to that, the EU Court emphasized that for the reason of the legal certainty limitation period must be fixed in advance.⁷

Consequently, in order to address the existing gap, in 1974 the EU Council brought Regulation 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition.⁸ Regulation 2988/74 envisaged two different set of rules concerning limitation periods.

First set of rules related to the imposition of penalties. In this context, Article 1 of the Regulation 2988/74 prescribed limitation period of three years “*for the infringements of provisions concerning applications or notifications of undertakings or associations of undertakings, requests for information, or the carrying out of investigations*”⁹ and limitation period of five years for “*all other infringements*”¹⁰. According to the wording of Article 1(2) of the Regulation 2988/74 limitation period begins on the day on which the infringement is committed¹¹. An exemption from that rule was envisaged for continuing or repeated infringement. As regulated by the Article 1(2) of Regulation 2988/74 limitation period for continuing or repeated infringement starts to run on the day on which the infringement ends¹².

Article 2(3) of the Regulation 2988/74 further stipulated, when twice limitation period elapses and the Commission has not yet reached a decision on the fine or penalty, the Commission’s power to impose fine is time- barred¹³.

In relation to interruption of limitation period, Article 2 of the Regulation 2988/74 envisaged that any action taken by the Commission for the purpose of the preliminary inquiry or proceedings regarding an infringement shall interrupt the statute of limitations in those proceedings. Regulation 2988/74 further provided a non-exhaustive list of actions that interrupt limitation period. Those are written request or decision by the Commission to provide information, decision on the commencement of the proceedings, notification on the statement of objections, etc¹⁴.

Second set of rules related to the enforcement of fines or other penalties. According to the Article 4 of the Regulation 2988/74, the Commission’s power to enforce imposed fines and other penalties is subject of limitation period of five years¹⁵. Limitation period starts to run from day on which the Commission’s decision become

⁷ Ibidem, points 18 and 19 of the Judgement.

⁸ Regulation (EEC) No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition, Official Journal L 319, 29/11/1974.

⁹ Article 1(1) (a) of Regulation 2988/74.

¹⁰ Article 1(1) (b) of Regulation 2988/74.

¹¹ Article 1(1) (a) of Regulation 2988/74.

¹² Article 1(2) of Regulation 2988/74.

¹³ Article 2 (3)) of Regulation 2988/74.

¹⁴ Article 1(2) of Regulation 2988/74.

¹⁵ Article 4(1) of Regulation 2988/74.

final¹⁶.

Regarding the enforcement of fines, it was envisaged that only following events would interrupt limitation period: (a) *“notification of a decision varying the original amount of the fine, penalty or periodic penalty payments or refusing an application for variation; (b) any action of the Commission, or of a Member State at the request of the Commission, for the purpose of enforcing payments of a fine, penalty or periodic penalty payment”*.¹⁷

In both case limitation period starts running from afresh¹⁸.

Analyzed rules set a foundation for regulation of the limitation period in EU competition cases and were in force for almost 30 years until Regulation 1/2003 was enacted. Regulation 1/2003 significantly transformed the way in which EU competition rules are enforced¹⁹. The major novelty introduced by the Regulation 1/2003 concerned the power of the national competition authorities and national courts to enforce EU competition law, notably Article 101 and 102 TEFU. In that context, the question arose whether national competition authorities and national courts when deciding on infringement of Articles 101 and 102 TEFU should also apply EU rules concerning the limitation period, envisaged by article 25 and 26 of the Regulation 1/2003.

The rules on limitation period in EU competition law were further tackled again only once, in the ECN+ Directive.²⁰ However, ECN+ Directive, unlike Regulation 1/2003 does not provide for a specific rule on limitation period. The purpose of ECN+ Directive in relation to limitation period is to achieve harmonization of the rules on limitation period within the Member States²¹.

Therefore, Regulation 1/2003 remained main legislative instrument regulating limitation period for the infringement Article 101 and 102 of the TEFU.

3. Limitation Period in the Regulation 1/2003

Articles 25 and 26 of the Regulation 1/2003 govern limitation period. Those rules do not differ significantly from the rules initially adopted by Regulation 2988/74. Just like Regulation 2988/74, Regulation 1/2003 also provides for two set of rules concerning limitation period.

Article 25 of the Regulation 1/2003 contains rules on limitation period for

¹⁶ Article 4(2) of Regulation 2988/74.

¹⁷ Article 5(1) of Regulation 2988/74.

¹⁸ Article 5(2) of Regulation 2988/74.

¹⁹ Communication from the Commission to the European parliament and the Council Ten Years of Antitrust under regulation 1/2003: Achievements and Future perspective, COM (2014) 435, 9. 7. 2014, p. 3.

²⁰ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3–33.

²¹ See more: Knapp, M., Cunha Costa, D., „Antitrust fines and Limitation Periods After the Implementation of Directive (EU) 2019/1 Throughout Member States - Focus on French and Polish Perspectives”, *International Review of Intellectual Property and Competition Law*, vol. 54 (2023), pp. 891-915. The document is available online at <https://link.springer.com/article/10.1007/s40319-023-01337-4>, last accessed 16.4.2025.

imposition of penalties, while Article 26 of the Regulation 1/2003 contains rules on limitation period for the enforcement of penalties.

3.1. Limitation Period for Imposition of Fines and Penalties

Article 25 of the Regulation 1/2003 provides for a comprehensive system of rules concerning the commencement and ending date of the limitation period. More specifically, it provides for a) rules on minimum and maximum limitation period, b) rules on commencement of limitation period, c) indicative list of actions that interrupt limitation period and d) rules regarding the suspension of the limitation period²².

So, with regard to the maximum statute of limitation Article 25(1) of Regulation 1/2003 establishes two distinct limitation periods varying of severity of infringement and impact of these infringements within EU competition law enforcement.

Shorter limitation period of three years is prescribed for the less severe infringements such as request for information or request on the conduct of inspection, while, longer, five years limitation period is prescribed for other, more serious (e.g. substantive) competition law infringements.

However, those limitation periods are not absolute. Article 25(5) further prescribes that “*Limitation period shall expire at the latest on the day on which a period equal to twice limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment*”.

Accordingly, the maximum statute of limitation for less serious infringements is six years, whereas maximum statute of limitation for all other, more serious infringements is ten years. Political messages send to the Commission by setting up ten years limitation period as maximum limitation period is that it cannot prosecute old cases forever and that should act promptly and timely, what is in line with EU principles of fairness and due process.

A starting point and key factor for the determination of when limitation period has elapsed is the determination of the exact day on which limitation period commenced. In that regard Article 25(2) of Regulation 1/2003 provides that in case of continuing and repeating infringements, such as for example in the case of bid – rigging cartels²³, limitation period shall begin the day on which the infringement comes to an end. For all other infringements, time shall begin to run on the day on which the undertakings committed infringement.²⁴

The burden of proof to provide evidence that support the claim that infringement ceased is on the Commission.

Article 25(3) of the Regulation 1/2003 further provide a general guideline and

²² De la Torre, Fernano Castillo, Fournie, Eric Grippini, *Evidence, Proof and Judicial Review in EU Competition Law*, Edward Elgar Publishing, 2017, p. 98- 100.

²³ Joshua, J., „Single Continuous Infringement of Article 81 EC: Has the Commission Stretched the Concept Beyond the Limit of its Logic?” (2009), *European Competition Journal*, 5(2) p. 451-459, available online at https://www.biicl.org/files/4360_single_continuous_infringement_of_article_81_ec__2_.pdf, last accessed at 2.05.2025.

²⁴ Article 25(2) of Regulation 1/2003.

non-exhaustive list of actions that interrupt limitation period. It states that “*any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings interrupt limitation period*”. Action that interrupt limitation period includes written request for information, on-the-spot inspections, notification of a Statement of Objection, initiation of proceedings, etc.²⁵

Since in competition cases it is common that large number of undertakings participate in violation of competition rules, Article 25(3) prescribes that “*the limitation period shall be interrupted from the day when at least on undertaking who participated in the infringement is notified about action*”.

Lastly, Article 25(6) of the Regulation 1/2003 further prescribes that limitation period shall be suspended during the proceedings before the EU Court.

3.2. Limitation Period for Enforcement of Fines and Penalties

Article 26 of the Regulation 1/2003 specifically governs the issue of enforcement of fines and penalties imposed by the Commission.

According to the Article 26 (1) limitation period for the enforcement of fine is five years. The purpose of this rule is to ensure that the fines are executed within reasonable time.

The time for execution of fines starts to run on the day on which Commission’s decision becomes final²⁶. Article 26 additionally provides for actions that trigger the interruption of the limitation period and those that result with suspensions of limitation period. Limitation period will be interrupted by following events:

- by the decision on the modification of the initial fine imposed by the Commission,
- by the decision rejecting a request for such modification, or
- by initiation of any enforcement measure by the Commission aimed at enforcing payment of the fine or periodic payment²⁷.

Article 26(5) sets out conditions for the suspension of the decision on the enforcement of penalties. Enforcement of payment shall be suspended pursuant to a decision of the EU Court²⁸. Further, enforcement of payment shall be suspended during any period in which time extension for payment has been granted²⁹.

4. EU Case Law on Limitation Period for Imposition of Penalties

Limitation period defense is, with more or less success, frequently invoked in cases against the Commission’s decision on fine. So, there is a substantial body of EU case law that addresses different aspects with regard to previously analyzed rules on limitation period. Some relevant cases will be analyzed further in the text.

²⁵ Van Bael & Bellis, *op. cit.*, p. 1212.

²⁶ Article 22(2) of Regulation 1/2003.

²⁷ Article 26(3) of Regulation 1/2003.

²⁸ Article 26(5) of Regulation 1/2003.

²⁹ Ibidem.

a) Decision of EU Court in *CMA CGM and Others v. Commission*³⁰.

Decision of EU Court in *CMA CGM and Others v. Commission* relates to illegal price agreement in maritime transport. The Commission has adopted infringement decision against shipping companies who have entered into prohibiting agreement and imposed them a total amount of fine of approximately 7 million euros³¹. Against this decision, 14 undertakings brought a claim before the EU Court. They presented six legal arguments in support for their application³² among which is the plea by which they contested Commission's decision on fine. Applicants stated that the fines imposed by contested decision are time - bared³³. In essence, they claimed that limitation period started to run on March 1995 when the Commission made a request to undertakings concerned to submit some documents relating their turnover and that consequently five-year limitation period relating to fines ended on 24 March 2000³⁴. They argued that the decision of fine is unlawful because the Commission has brought that challenged decision on 16 May 2000.³⁵ They further claimed that the Commission's request for additional information from June 1998 and October 1999 did not interrupt limitation period because those request "*were not indispensable for the purpose of preliminary investigation in respect of an infringement*".³⁶ They also claimed that by the time when the Commission has send those requests, preliminary investigation was concluded and the Commission has already adopted statement of objections³⁷.

After analysis of fact of the case in relation to limitation period, the EU Court established following facts. First, the EU Court established that limitation period started on 28 September 1992 because the Commission has found that 28 September 1992 was the day when the infringement ended.³⁸ Secondly, the EU Court found that limitation period was interrupted two times, first time on 19 April 1994 when the Commission issued the statement of objections and second time on 24 March 1995 when the Commission has send a request to the parties to provide an information regarding their turnover figures.³⁹

Given that the contested decision was adopted on 16 May 2000 (five years after March 1995), the Court concluded that it must be established whether some other subsequent Commission's actions or acts validly interrupted the five-year limitation period⁴⁰. Court also stated that in case of absence of actions or acts that interrupted

³⁰ Case T-213/00, *CMA CGM and Others v Commission of the European Communities*, Judgment of the Court of First Instance (Third Chamber) of 19 March 2003, ECLI:EU:T:2003:76.

³¹ Commission fines shipping lines for an illegal price agreement on the Europe/Far East trade, Press release May 17, 2000 (https://ec.europa.eu/commission/presscorner/detail/en/ip_00_486).

³² See Point 48 of the Judgement.

³³ Point 468 of the Judgement.

³⁴ Ibidem, point 469 of the Judgement.

³⁵ Ibidem, point 470 of the Judgement.

³⁶ Ibidem.

³⁷ Ibidem, point 471 of the Judgement.

³⁸ Ibidem, point 482 of the Judgement.

³⁹ Ibidem.

⁴⁰ Ibidem, point 482 of the Judgement.

limitation period, the Commission's power to impose fine would be time-barred⁴¹.

So, in order to determine whether limitation period to impose fine elapsed or not the Court had to determine as to whether Commission's requests for additional information from June 1998 and October 1999 interrupted limitation period. Second, the Court also had to determine were those requests were "necessary steps" for finding an infringement and that they were not made with a sole purpose to prolong the limitation period.

Following the throughout analysis of all relevant issues the EU Court brought final conclusion and annulled Commission's decision on fine because five year limitation period for imposing fine had expired.⁴² The central to such conclusion was the Courts finding that the Commission "*has concluded its examination of the file when the request for information on 24 March 1995 was send to applicant*".⁴³ The Court also concluded that the Commission "*did not take any step in investigation before sending the requests for information on 30 June 1998 and 11 October 1999, and that those requests for information were not necessary for the conduct of investigation and that they did not therefore validly interrupt the limitation period*".⁴⁴

By saying that the EU Court in fact set up a standard for actions that interrupt limitation period. It confirmed that not all actions of the Commission, but only those actions that are necessary for the conduct of investigation, interrupt limitation period. Whether specific action was necessary or not should be decided in light of facts of each and every case.

b) Decision of the EU Court in case Kilpailu-ja kuluttajavirasto⁴⁵. One of the recent and very much commented judgement of the EU Court concerns the decision of the EU Court in so called Kilpailu-ja kuluttajavirasto⁴⁶.

The issue concerns the decision of Finish tribunal for economic affairs against undertaking Eltel. Finish tribunal for economic affairs annulled the decision of Finish competition authority and it imposed fine to Eltel's subsidiary and its parent companies in amount of 53 million euros for alleged single continuous infringement involving bid rigging cartel, because it found that five years limitation period for imposition fine has elapsed.

⁴¹ *Ibidem*.

⁴² *Ibidem*, point 517 of the Judgement.

⁴³ *Ibidem*, point 516 of the Judgement.

⁴⁴ *Ibidem*, point 516 of the Judgement.

⁴⁵ Case C-450/19 Kilpailu- ja kuluttajavirasto Judgment of the Court (Second Chamber) of 14 January 2021, ECLI:EU:C:2021:10.

⁴⁶ See: Opinion of Advocate General Pitruzzella delivered on 10 September 2020 (1) Case C-450/19, Kilpailu- ja kuluttajavirasto ECLI:EU:C:2020:698; Ysewyn, J., Coates, K., *The CJEU provides guidance on the end date in case of a bid-rigging cartel*, Covington Competition, 27 January 2021, available online at <https://www.covcompetition.com/2021/01/the-cjeu-provides-guidance-on-the-end-date-in-case-of-a-bid-rigging-cartel/>, last accessed 11 4. 2025; Ritz, C., Weber, H., *Ending the endless: Cartel infringement end when competition is no longer restricted, the ECJ rules*, 26 March 2021, available online at <https://www.hoganlovells.com/en/publications/ending-the-endless-cartel-infringements-end-when-competition-is-no-longer-restricted-the-ecj-rules>, 26.03.2025; Lindeboom, J., „Determining the End of an Infringement of Article 101(1) TFEU in Bid-Rigging Cartel Cases (C-450/19 Kilpailu - ja kuluttajavirasto)”, *European Competition and Regulatory Law Review*, vol. 6, Issue 1, 2022, p. 92-97.

The Finish tribunal for economic affairs rejected the application for fine because it has established that Eltel participated in the restriction of competition latest until October 2009. Therefore, it concluded that at the time when the Finish Competition authority submitted application, relevant infringement was already time barred.⁴⁷ The Court also held that the cartel only covered the design work preceding the construction works on the high-voltage line and not the construction works on that high-voltage line⁴⁸. Since the Finish competition authority brought infringement decision on 31 October 2014, the Court held that limitation period has elapsed and that the Finish competition authority can no longer impose fine.

Finish competition authority filed an appeal contesting the ruling of Finish tribunal for economic affairs before the Supreme Administrative Court. It claimed, in essence, *“That prohibited form of coordination lasted until the date of the last payment (that is to say, 7 January 2010), since the contract implementing the unlawful pricing was still in force at that time”*⁴⁹. It also stated that the court should consider the impacts of illegal practice when calculating duration and ending day of the infringement.

Eltel however denied that there was a cartel agreement relating to the high - voltage line in question.⁵⁰ It further stated that statute of limitation began to run on 4 June 2007, the day when the tender was submitted.⁵¹

So faced with the dilemma regarding, among other issues, on the ending day of infringement in case of single continuous infringement, the Finish Supreme Administrative Court decided to stay the proceedings⁵². It requested a preliminary ruling from the EU Court asking the EU Court to clarify *“whether the competition infringements continue, due to economics effects caused thereby throughout the whole period in which contractual obligations arising from the contract are discharged or payments for the works are made, or, is it to be assumed that the competition infringement continues only until the point at which bid is submitted?”*⁵³

Four points of time are identified as the possible ending day of the infringement: a) when undertakings submitted their tender, b) when the contract had been concluded, c) when payment of the last installment has been made, d) when the work was completed.⁵⁴

On that point, the EU Court took the following view. First, the Court stated that Articles 101 and 102 TFEU focus on economic effects of agreements, rather than on their legal form⁵⁵. The Court further explained that the entire duration of the alleged violation must be determined taking into account the period during which the undertakings engaged in prohibited conduct and that an infringement may last even

⁴⁷ Point 11 of the Judgement.

⁴⁸ Point 11 of the Judgement.

⁴⁹ Point 10 of the Judgement.

⁵⁰ Point 13 of the Judgement.

⁵¹ *Ibidem*.

⁵² Point 17 of the Judgement.

⁵³ Point 17 of the Judgement.

⁵⁴ Point 19 of the Judgement.

⁵⁵ Point 30 of the Judgement.

though the agreement has already ceased to be in force⁵⁶.

Having analyzed all relevant facts of particular case, the Court took position that in light of available facts, it should be concluded that “*the infringement period corresponds to the period up to the date of signature of the contract concluded between the undertaking and contracting authority*”⁵⁷ since by that time undertakings concerned agreed on the essential characteristics of the contract⁵⁸.

Advocate General Pitruzzella took the same view⁵⁹. He stated that “*in a situation in which a cartel participant entered into a construction contract, as agreed in the cartel, with a player outside the cartel, and where that cartel was limited to that contract, infringements are deemed to have ceased on the date on which cartel participant submitted a tender for works or entered into a contract for the execution of the works*”.⁶⁰

However, both, the Court and the Advocate General Pitruzzella emphasized that national court is responsible for determining the date on which the essential characteristics of the relevant contract have been definitely determined.⁶¹

c) Decision of the EU Court in case Akzo Nobel and Others v. Commission.

The decision of the EU Court in Akzo Nobel and Others v. Commission deals with very specific legal issue and that is the limitation period for applying sanctions to parent companies for infringement of competition rules by its subsidiary.

In this case, on 11 November 2009, the Commission brought a decision in which it found that Akzo Nobel BV (a parent company) and Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV (subsidiary companies) are liable for entering into a prohibited agreement and the infringement of EU competition rules.

Against that decision, those companies filed a claim to the General Court. The General Court decided to partially annul the Commission’s decision regarding the fines imposed to Akzo Nobel’s subsidiaries (Chemicals GmbH and Akzo Nobel Chemicals BV) because the limitation period had expired. However, it did not annul fine imposed to a parent company, Akzo Nobel BV.

Against that decision Akzo Nobel parent company as well as Akzo Nobel’s subsidiaries filed an appeal to the EU Court asking the Court to set aside the judgement of the General Court. The appellants argued that the General Court misapplied the rules on parent company liability and that the parent company cannot be held liable for the unlawful conduct of their subsidiaries. They claimed that the EU Court confirmed in its judgment in the case “*Total v Commission*”⁶², that, where the liability of a parent company is derived entirely from that of its subsidiary, the liability of the former cannot exceed that of the latter. In such situations, where the parent company has lodged an appeal with the same object as the subsidiary’s, the parent company must benefit from

⁵⁶ *Ibidem*.

⁵⁷ Point 42 of the Judgement.

⁵⁸ *Ibidem*.

⁵⁹ Opinion of Advocate General Pitruzzella of 10 September 2020 (Case C-450/19).

⁶⁰ Point 48 of the Opinion of Advocate General Pitruzzella.

⁶¹ Point 42 of the Judgement and point 48 of the Opinion of Advocate General Pitruzzella.

⁶² Case C-597/13 P, Total v Commission, EU:C:2015:613.

the partial or full annulment of the fine imposed on the subsidiary”⁶³.

In that context, they claimed that *“the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals BV should have led to the annulment of the fine imposed on Akzo Nobel, as parent company, for the first infringement period, since that fine was imposed on it only on account of its subsidiaries’ direct participation in the infringements”*.⁶⁴

So, it was up to the EU Court to provide an answer whether the Commission’s power to impose fines to subsidiary companies because of the limitation period, precluded the parent company from being held liable⁶⁵.

The Court said that *“according to the well-established case law of the Court, the parent company to which the unlawful conduct of its subsidiary is attributed is held individually liable for an infringement of the EU competition rules which it is itself deemed to have infringed, because of the decisive influence which it exercised over the subsidiary and by which it was able to determine the subsidiary’s conduct on the market”*.⁶⁶

The Court further said that *“in order to hold any entity within an economic unit liable, it is necessary to prove that one entity at least has committed an infringement of the EU competition rules and that that fact be noted in a decision which has become definitive”*.⁶⁷

During its analysis, the EU Court established the following facts:

a) that participation in a cartel of Akzo Nobel BV subsidiaries ended on 28 June 1993 and that because of that fact the Commission cannot impose fine to Akzo Nobel BV subsidiaries,

b) that during (first) infringement period Akzo Nobel BV had controlling influence in both subsidiaries,

c) that Akzo Nobel BV, unlike its subsidiaries, participated in the infringement until 21 or 22 March 2000 (7 years longer than its subsidiaries).⁶⁸

In light of those facts, the Court concluded that Akzo Nobel BV was liable for the infringement despite the fact that the limitation period to impose fines to Akzo Nobel’s subsidiaries has expired.

5. EU Case Law on the Limitation Period for Enforcement of Penalties

While there is a substantial body of EU case law dealing with the issue of limitation period and imposition of fines, there is much less cases dealing with limitation period in relation to enforcement of fines. One decision, in which EU Court addressed whether limitation period for the enforcement of fine has elapsed, is in

⁶³ Point 29 of the Judgement.

⁶⁴ Point 30 of the Judgement.

⁶⁵ Point 45 of the Judgement.

⁶⁶ Point 56 of the Judgement.

⁶⁷ Point 60 of the Judgement.

⁶⁸ Point 75 of the Judgement.

*Ferriere Nord SpA v. Commission*⁶⁹.

In this case, the Commission set up fines to several undertakings, among which was *Ferriere Nord SpA* based on the infringement decision. *Ferriere Nord SpA* appealed Commission's decision on fine, before the General Court and the Court, however, both courts, the General Court in 1995 and the Court in 1997 confirmed Commission's decision on fine. Payment of fine was guaranteed by bank guarantee issued by Banco di Roma on 26 October 1989.

Ferriere Nord by letter of 2 December 1997 informed the Commission that it had paid to their account amount of ITL 483 840 000,00 what was corresponding to the amount 320 000,00 euro according to the exchange rate applicable in 1989. The Commission received payment on 15 December 1997 in a value of 249 918,00 euro⁷⁰. Seven years later, on 5 February 2004, the Commission notified *Ferriere Nord* that they still owe the amount of 564 402.26 euro (the principal amount of fine, less 249 918,00 paid on 15 December 1997 including interest). The Commission made a request to *Ferriere Nord* to settle the debt as quickly as possible. *Ferriere Nord* replied to the Commission on 25 February 2004 claiming that Commission's power to bring decision on the enforcement of fine is time-barred and it raised claim before the EU Court requesting to annul Commission decision on fine. In order to determine whether Commissions power to enforce fine is time-barred or not, the EU Court had to establish when limitation period to enforce fine begun and was it interrupted. After careful analysis of all facts, the EU Court concluded that the limitation period started to run on the date of notification of the *Ferriere Nord SpA* on EU Court's judgement in 1997. The Court held that limitation period was once interrupted when the Commission rejected *Ferriere Nord's* request for the reduction of penalties. The Court further concluded that the fax and letter of the Commission send to claimant did not interrupt limitation period. It also supported applicants finding that Commission's power to enforce fine was time barred on 18 September 2002.⁷¹

6. Do Rules on Limitation Period Limit Commission's Power to Bring an Infringement Decision?

Analyzed rules on limitation period provide for a legal safeguard to undertakings who had broken the law from payment of fines. However, subject to discussion is whether the rules on limitation period also apply to the Commission's decision that establishes a violation of competition rules? Or, said differently, the question would be, is the Commission, despite the fact that the decision on fine is time barred, entitled to render a decision on a violation of Article 101 and 102 of the TEFU?

The issue is highly relevant because, even if the obligation to pay fine is time-barred, the Commission may still issue a decision on the infringement and such a

⁶⁹ Case T-153/04 *Ferriere Nord SpA v. Commission*, CFI Judgement of 27 September 2006, ECLI:EU:T:2006:277.

⁷⁰ *Ibidem*, point 12 of the Judgement.

⁷¹ *Ibidem*, point 53 of the Judgement.

decision can potentially trigger public law proceedings in other member States, where longer statute of limitations are prescribed in national laws.⁷² It may also affect a third parties rights in relation to damage claim or Commission's power to impose remedies or to order cessation of the infringement. Lastly, infringement decision can be seriously detrimental to the reputation of undertakings concerned.

In relation to that, the prevailing opinion of legal scholars is that rules on limitation period do not affect the right of the Commission to bring the infringement decision⁷³. The central argument supporting such view is based on reasoning according to which anti-competitive practices are illegal and as such, it cannot be considered as legal just because of the passage of time.

EU Court takes similar view. In joined cases Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Ltd. v. Commission⁷⁴, applicants in essence claimed that *"the expiry of the limitation period for the power to impose fines and periodic penalty payments necessarily implies the extinction of the implied power to find the infringement"*.⁷⁵ They also claimed that *"after limitation period for imposing fines elapses, the Commission could no longer adopt a prohibition decision finding that they had committed an infringement"*⁷⁶. The Court did not uphold such view. Among others, in this case, the EU Court said, *"the power of the Commission to impose fines on persons committing an infringement on account of the expiry of the limitation period does not in itself preclude the Commission from the adoption of a decision finding that that past infringement has been committed"*.⁷⁷ The EU Court further explained that a decision finding an infringement *"cannot be considered as a penalty, within the meaning of Article 1(1) of the Regulation 2988/74 and is therefore not covered by the limitation period laid down by that provision"*⁷⁸.

In several other cases EU Court confirmed its position. For example, in Peroxide Organicos S.A. v. Commission⁷⁹ EU Court repeated legal reasoning adopted in case Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Ltd v. Commission. It said, *"The decision finding an infringement cannot be considered as penalty within the meaning of Article of the regulation on limitation and is not therefore covered by the limitation period laid down by that provision. Therefore, the fact that the Commission's power to impose fines is time-barred cannot affect its implicit power to*

⁷² See: Van Bael & Bellis, *op. cit.*, p. 1214.

⁷³ See for example: Blažo, Ondrej, *What Do Limitation Periods for Sanctions in Antitrust Matters really Limit?*, "Yearbook of Antitrust and Regulatory Studies", vol. 5, 2012, p. 85, the document is accessible online at <https://press.wz.uw.edu.pl/yars/vol5/iss7/3/>, last accessed 25.04.2025; Van Bael & Bellis, *op. cit.*, p. 1214.

⁷⁴ Joined Cases T-22/02 and T-23/02, Sumitomo Chemical Co. Ltd. and Sumika Fine Chemicals Ltd. v. Commission, Judgment of the Court of First Instance (Fourth Chamber, Extended Composition) 6 October 2005, ECLI:EU:T:2005:349.

⁷⁵ *Ibidem*, point 62 of the Judgement.

⁷⁶ *Ibidem*, point 25 of the Judgement.

⁷⁷ *Ibidem*, point 131 of the Judgement.

⁷⁸ Blažo, Ondrej, *op. cit.*, p. 94 - 95.

⁷⁹ Peróxidos Orgánicos, SA v. Commission, Judgment of the Court of First Instance (Third Chamber) 16 November 2006, Case T-120/04, C2006/326/118.

find an infringement”⁸⁰.

In Animal Feed Vitamin cartel⁸¹ EU Commission imposed fine to several European producers who participated in cartel but was unable to impose fines to North American producers because five-year limitation period for the imposition of fine to them elapsed. However, even though American companies were not fined, the infringement decision related to them as well⁸².

7. Can National Competition Authorities and the Courts of the Member State Apply Rules EU on Limitation Period?

Another controversial issue that also arose in relation to the application of EU competition rules on limitation period concern the application of EU rules on limitation period by national courts of Member States and national competition authorities of the Member States.

Since the entry into force Regulation 1/2003, national courts and national competition authorities are entitled to apply Article 101 and 102 of the TEFU. Therefore, the question arose whether, when applying Article 101 and 102 of the TEFU, national courts and national competition authorities should apply rules on limitation period prescribed by Regulation 1/2003 or they should apply rules on limitation period prescribed by national legislation of Member States, which, may differ from rules on limitation period adopted by regulation 1/2003.

With that regard to that, the EU Court stated that from the purpose and from the wording of Regulation 1/2003 it is clear that rules on limitation period exclusively relate to the powers conferred upon the Commission⁸³. In that context, Articles 25 and 26 of the Regulation 1/2003 are not applicable to proceedings in EU Member States.

However, bearing in mind the fact that rules on limitation periods in EU Member States may significantly differ from those prescribed in regulation 1/2003 the EU Court took the view that EU Member States are required to adhere to the principles of EU law, particularly with the principle of effectiveness and the principle of equivalence.

With that regard, in its decision in Whiteland case⁸⁴ the Court clarified that *“National rules laying down limitation period must be devised in such a way as to strike the balance, on one hand, providing legal certainty and ensuring that cases are dealt with the reasonable time as general principle of EU law, and on the other the effective*

⁸⁰ *Ibidem*, Point 18 of the Judgement.

⁸¹ Akzo Nobel NV and Others v Commission of the European Communities, Case T-112/05, ECLI:EU:T:2007:381.

⁸² Commission imposes 66.34 million euro fines on animal feed vitamin cartel, EU Commission, Press release, 9 December 2004, https://ec.europa.eu/commission/presscorner/detail/en/ip_04_1454.

⁸³ Pereira, V., Brueggemann, N., „National Limitation Period and the Principle of Effectiveness under Article 101 TEFU: Case C-308/19 Whiteland”, *Journal of European Competition Law and Practice*, 2021, Vol 12, No. 5, p. 391, the document is available on line at : <https://sci-hub.se/10.1093/jeclap/lpab033>, last accessed 13.04.2025).

⁸⁴ Consiliul Concurenței v. Whiteland Import export SRL, Case C-308/19 of 21 January 2021, ECLI:EU:C:2021:47.

and efficient application of Article 101 and 102 of TEFU, in order to safeguard the public interest in preventing the operation of the internal market being distorted by agreements or practices harmful to competition”⁸⁵.

By saying that, the EU Court in this case once again confirmed procedural autonomy⁸⁶ of EU Member States, a principle established in its judgement in Rewe⁸⁷. Principle of procedural autonomy recognizes the rights of the EU Member States to bring their own procedural rules while implementing or enforcing EU law⁸⁸. However, the EU Court said EU member States are obligated to respect principles of effectiveness and equivalence of EU law. The principle of effectiveness aims to ensure that national procedural rules make exercise of EU – based rights impossible or excessively difficult⁸⁹ while principle of equivalence requires from the Member States not to discriminate national law claims and claim arising from application of EU law⁹⁰.

8. Conclusion

The limitation period for the competition law violations is an important legal mechanism for ensuring legal certainty on one side, and effective enforcement of the EU competition law on the other side. It guarantees that the competition authorities take actions within a reasonable timeframe and in accordance with due procedure, and at the same time protecting undertakings from the possibility of being held liable for indefinite time.

Analysis conducted in this paper showed that EU rules on limitation period provide for a clear time limit for enforcement actions for the infringements of EU competition rules. However, numerous challenges arose in relation to application of rules on limitation period in practice, such as determining the precise moment when the limitation period started, or actions that interrupt limitation period, or application on limitation period by national competition authorities, etc. The contribution of the EU Court in addressing those challenges is essential. Court analysis on limitation period provided not only guidance on complex legal dilemmas but also ensured that key legal principles of EU law such as fairness, proportionality and effective legal protection are upheld.

Confirmation of such view can be found in the Court’s reasoning which

⁸⁵ *Ibidem*, point 49 of the Judgement.

⁸⁶ See: Baghrizabehi, D., „The Current State of National Procedural Autonomy. A Principel in Motion”, *Intereulaweast*, Vol III(1) 2016, available online at <https://hrcak.srce.hr/file/236906>, last accessed 2.05. 2025.

⁸⁷ Rewe- Zentralfinanz and Rewe –Zentral, Judgement of 16 December 1976, Case 33/76, EU:C:1976:188

⁸⁸ Bonelli, M., (2019) „Effective Judicial Protection in EU Law: An Evolving Principle of a Constitutional Nature”, *Review of European Administrative Law*, 12(2) pp. 35-62, available online at <https://www.ingen-taconnect.com/content/plp/real/2019/00000012/00000002/art00003;jsessionid=2f0i2tfhqu1h.x-ic-live-03>, last accessed 6.5.2025.

⁸⁹ Prete, L., Kuplewatzky, N., *Procedural Autonomy*, in *Global Dictionary of Competition Law, Concurrences*, Art. N° 86658, available online at <https://www.concurrences.com/en/dictionary/procedural-autonomy>, last accessed 11. 4. 2025).

⁹⁰ *Ibidem*.

emphasizes that rules on limitation period do not prevent EU Commission from adopting the infringement decision. This interpretation ensured that procedural deadlines do not undermine achievement of fundamental objectives of EU law. Such approach is necessary for effective competition law enforcement on EU level because it ensures that rules on limitation period serve their intended function and prevent that they are used as an obstacle to substantive justice.

Bibliography

1. Baghrizabehi, D., „The Current State of National Procedural Autonomy. A Principle in Motion”, *Intereulaweast*, Vol III(1) 2016, available online at <https://hrcak.srce.hr/file/236906>, last accessed 2.05.2025.
2. Blažo, Ondrej, *What Do Limitation Periods for Sanctions in Antitrust Matters really Limit?*, “Yearbook of Antitrust and Regulatory Studies”, vol. 5, 2012, available online at <https://press.wz.uw.edu.pl/yars/vol5/iss7/3/>, last accessed 25.04.2025.
3. Bonelli, M., (2019) „Effective Judicial Protection in EU Law: An Evolving Principle of a Constitutional Nature”, *Review of European Administrative Law*, 12(2) pp. 35-62, available online at <https://www.ingentaconnect.com/content/plp/real/2019/00000012/00000002/art00003;jsessionid=2f0i2tfhqu1h.x-ic-live-03>, last accessed 6.05.2025.
4. De la Torre, Fernano Castillo, Fournie, Eric Grippini, *Evidence, Proof and Judicial Review in EU Competition Law*, Edward Elgar Publishing, 2017, p. 98- 100.
5. Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1. 2019, p. 3–33.
6. Joshua, J., „Single Continuous Infringement of Article 81 EC: Has the Commission Stretched the Concept Beyond the Limit of its Logic?” (2009), *European Competition Journal*, 5(2) p. 451-459, available online at https://www.biicl.org/files/4360_single_continuous_infringement_of_article_81_ec__2_.pdf, last accessed at 2.05.2025.
7. Knapp, M., Cunha Costa, D., „Antitrust fines and Limitation Periods After the Implementation of Directive (EU) 2019/1 Throughout Member States - Focus on French and Polish Perspectives”, *International Review of Intellectual Property and Competition Law*, vol. 54 (2023), pp. 891-915, available online at <https://link.springer.com/article/10.1007/s40319-023-01337-4>, last accessed 16.4.2025.
8. Lindeboom, J., „Determining the End of an Infringement of Article 101(1) TFEU in Bid-Rigging Cartel Cases (C-450/19 Kilpailu - ja kuluttajavirasto)”, *European Competition and Regulatory Law Review*, vol. 6, Issue 1, 2022, p. 92-97.
9. Pereira, V., Brueggemann, N., „National Limitation Period and the Principle of Effectiveness under Article 101 TFEU: Case C-308/19 Whiteland”, *Journal of European Competition Law and Practice*, 2021, Vol. 12, No. 5, pp. 390-392, available online at: <https://sci-hub.se/10.1093/jeclap/lpab033>, last accessed 13.04.2025.
10. Prete, L., Kuplewatzky, N., *Procedural Autonomy*, in *Global Dictionary of Competition Law, Concurrences*, Art. N° 86658, available online at <https://www.concurrences.com/en/dictionary/procedural-autonomy>, last accessed 11.04. 2025.
11. Regulation (EEC) No. 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition, Official

Journal L 319, 29/11/1974.

12. Ritz, C., Weber, H., *Ending the endless: Cartel infringement end when competition is no longer restricted, the ECJ rules*, 26 March 2021, available online at <https://www.hoganlovells.com/en/publications/ending-the-endless-cartel-infringements-end-when-competition-is-no-longer-restricted-the-ecj-rules>, last accessed 26.03.2025.
13. Van Bael & Bellis, *Competition Law of the European Union*, Sixth edition, Wolters Kluwers, 2021.
14. Ysewyn, J., Coates, K., *The CJEU provides guidance on the end date in case of a bid-rigging cartel*, Covington Competition, 27 January 2021, available online at <https://www.covcompetition.com/2021/01/the-cjeu-provides-guidance-on-the-end-date-in-case-of-a-bid-rigging-cartel/>, last accessed 11.04.2025.