ECJ Rules on Absolute Limitation Periods for EU Fraud

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News

In its judgment of 15 October 2026 in Case C-321/25 (*Gidzhinov*), the ECJ clarified the requirements under EU law regarding national limitation periods in cases of serious VAT fraud. Accordingly, an absolute limitation period of 15 years is compatible with Art. 325 TFEU and the PIF Convention, provided that it does not give rise, in the Member State concerned, to a systemic risk that serious acts of fraud to the detriment of the EU's financial interests will go unpunished. Furthermore, the ECJ ruled on the proportionality of the penalty for collusion in the context of organised crime.

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Background of the case and questions referred

The case relates to criminal proceedings against several individuals in Bulgaria. They are charged with leading, or having participated in, an organised criminal group for the purpose of committing VAT fraud. The offences were committed between March 2011 and November 2012. The criminal proceedings, which were initiated in 2015, have not yet been concluded due to several changes of the court panel. Under Bulgarian law, there is an absolute limitation period of 15 years for VAT fraud and *participation* in a criminal organisation. This period therefore expires in 2026 and 2027 respectively, and, given the complexity of the offence, it is impossible for the criminal proceedings in Bulgaria to be finally concluded by then. The situation is different for the prosecution of A and B for *leading* the organised criminal group, for which the applicable absolute limitation period is 22 years and six months and therefore does not expire until 2035.

In light of the ECJ judgement in Case C-107/23 PPU (*Lin,* →eucrim 2/2023, 135-136), the referring Bulgarian court asks whether the absolute limitation period, which is based "solely" on the maximum potential penalty prescribed for the offence and does not, amongst other things, take into account the complexity of the case, is compatible with Art. 325 TFEU and Art. 2(1) of the PIF Convention.

The second question referred concerns the interpretation of Art. 3(1)(b) of Framework Decision 2008/841 on the fight against organised crime. This provision regulates the minimum standard of penalties for offences relating to the participation in a criminal organisation as prescribed in Art. 2 of said Framework Decision. In the context at issue, the referring Bulgarian court points to an inconsistency in the Bulgarian scale of penalties. Accordingly, Bulgarian law provides for a maximum prison sentence of eight years for tax fraud, whilst participation in an organised criminal group and leading such a group are punishable by maximum prison sentences of ten and 15 years respectively, even though the sole criminal purpose of that organised group is the commission of tax evasion. In view of Art. 3(1) (b) in conjunction with Art. 2(b) of Framework Decision 2008/841, the referring court takes the view that the penalty imposed for such agreements must not be more severe than the penalty provided for the offences that are the subject of that agreement, as otherwise the

principle of proportionality would be infringed. This would render Bulgarian criminal law incompatible with EU law.

The ECJ decision and reasoning on the limitation period

The ECJ first stated that the acts for tax fraud in question must be classified as "serious", offences relating to VAT constitute a case of fraud affecting the EU's financial interests, and the PIF Convention is applicable to them *ratione temporis*. Hence, the Member State's freedom to choose the applicable penalties is limited by Union law insofar as the fraudulent conduct is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition.

Regarding the material time in the main proceedings and referring to its judgment of 16 July 2026 in *Lin II*, the ECJ clarified in the second place that, on the one hand, Union law affects national limitation periods if a sytemic risk exists that PIF offences remain unpunisehd in criminal proceedings, but, on the other hand, it respects absolute limitation periods that help ensure legal certainty. In order to be compatible with Union law, such absolute limitation periods must be of sufficient duration so as not to make it impossible or excessively difficult in practice to protect the EU's financial interests. In this regard, account must be taken of all the elements of the limitation rules concerned and of the degree of complexity of the proceedings necessary in order to establish the infringements in question.

The judges in Luxembourg concluded that an absolute limitation period of 15 years of the commission of PIF offences is, in principle, sufficient to complete the criminal proceedings, "provided that such a period does not, in the Member State concerned, lead to a systemic risk of impunity for such instances of fraud." Changes in the composition of court panels do not consitute a systemic risk of impunity for those offences.

The ECJ's decision and reasoning on the proportionality of the penalty

As regards the question of the range of penalties for collusion in the context of organised crime, the judges in Luxembourg pointed out that the provisions of EU law merely set out minimum requirements and do not prevent Member States from providing for maximum prison sentences of more than five years. Furthermore, the penalty for the conspiracy may be higher than the penalty for the planned offence. Or in other words: Union law does not preclude national legislation which lays down, in respect of the conduct referred to in Art. 2 of Framework Decision 2008/841, a custodial sentence the maximum duration of which is longer than that provided for the offences that constitute the aim of that conduct.

Limits are still imposed by the principle of proportionality enshrined in Art. 49(3) of the Charter of Fundamental Rights of the European Union. In this context, the range of sentences under Bulgarian law for an organised crime group whose aim is to commit VAT fraud do not appear, as such, to exceed the limits of appropriateness and necessity of Art. 49(3) of the Charter.

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