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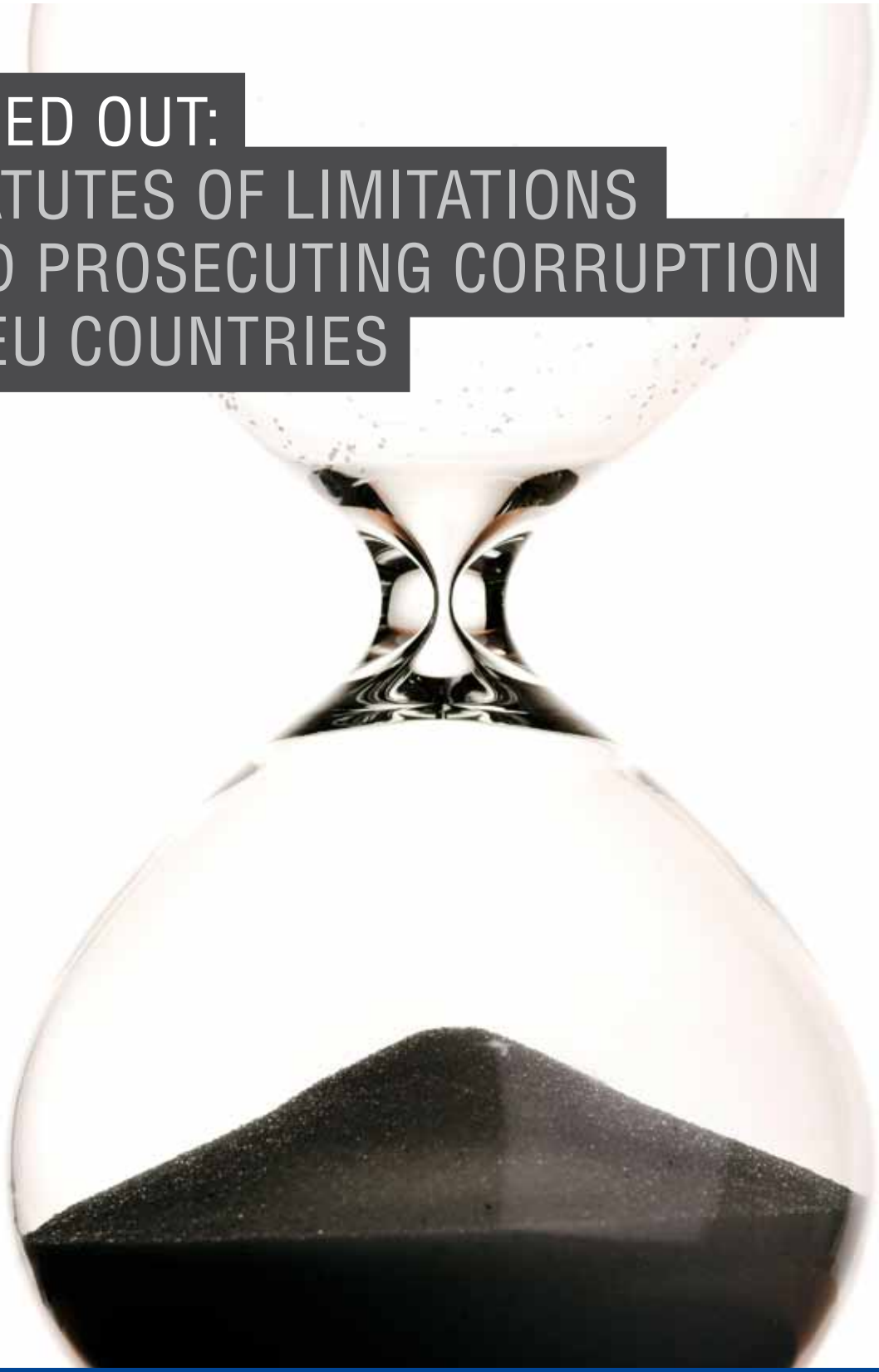
TIMED OUT:
STATUTES OF LIMITATIONS AND PROSECUTING CORRUPTION IN EU COUNTRIES



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EXECUTIVE SUMMARY

This report assesses the impact of statutes of limitations (SoL) on the prosecution of corruption offences across the European Union (EU). It is based on 27 studies which examined the nature of SoL in different national legal contexts in order to identify weaknesses and good practices.

The research found that impunity for corruption-related offences is a matter of significant concern across the EU. The key problems identified were the lack of detection of corruption cases and the lack of human resources and expertise of law enforcement bodies and judicial staff. In the majority of European countries, lengthy proceedings, sometimes combined with a high level of bureaucracy and excessive requirements of proof, constitute serious obstacles to anti-corruption law enforcement. In such a context, statutes of limitations are often too short to allow the prosecution of crimes, particularly if there are not sufficient options to expand the limitation period in case of delays.

In some European countries, particular aspects of the SoL regime constitute serious problems: in Greece, Italy and Portugal, proceedings can effectively be closed even if an offender has been found guilty in the first instance. In addition, the Greek system provides an extremely favourable SoL regime for certain persons, mainly politicians. In France, statutes of limitations for most corruption-related offences are too short to ensure effective prosecution and in Spain, they are very short for some corruption offences but can be considered adequate for others.

In the majority of European jurisdictions, the SoL regime has some weaknesses or loopholes. International cooperation on criminal matters or immunity provisions which can cause significant delays are often not considered as reasons to prolong proceedings. Even though this has not led to the dismissal of a significant number of proceedings so far, it is a matter of concern, particularly in complex cases which may have a cross-border dimension requiring international cooperation.

Only in 10 of the 27 EU member states could data regarding the number of proceedings closed due to SoL be collected. While the available statistics show a rather low percentage of closed proceedings in most cases, there are two notable exceptions. In Italy, since 2005 one in 10 trials was dismissed during the prosecution phase, as were up to four per cent of criminal proceedings in Slovakia.

Several European jurisdictions provide good practice and most recent reform efforts have led to an improvement of SoL regimes with regard to prosecuting corruption-related crimes. In several cases, SoL periods were lengthened significantly or the grounds for suspension or interruption were extended. In contrast, recent reforms in Italy have further shortened the limitation periods.

The main recommendations from the research are that national policymakers should carefully review their country's SoL regime in order to close any loopholes for the prosecution of corruption offences. Given that particularly complex corruption cases are often difficult to detect and prosecute, limitation periods for serious corruption offences should be 10 years or longer. The calculation of SoL should reflect the specificities of corruption cases. The SoL regime should provide for delays if a proceeding is put on hold because a party involved is protected by immunity, and for delays due to international cooperation. SoL should not allow for proceedings to be closed after the first instance judgement. Otherwise, there is a risk that a sentence against an alleged offender cannot be enforced because the case prescribed during the appellate instances. Data on criminal cases closed due to SoL should be collected and made available in order to identify the impact of SoL on the administration of justice. The specific reasons for the closures should also be recorded in order to identify and address weaknesses in the system.

GLOSSARY

ABSOLUTE LIMITATION PERIOD
The absolute limitation period is the maximum period within which action can be brought against an alleged offender. Regardless of any grounds for interruption, suspension or extension, the absolute limitation period cannot be extended under any circumstances.

ABUSE OF FUNCTIONS
The abuse of functions or position is referred to as the performance of (or failure to perform) an act, which is in violation of the law, by a public official in the discharge of his or her functions. The performance of (or failure to perform) such an act is carried out by the public official for the purpose of obtaining an undue advantage for him- or herself or for another person or entity.

ADMINISTRATIVE PROCEEDING
An administrative proceeding is a non-judicial determination of fault or guilt and may include penalties of various forms. Administrative proceedings are often carried out by governments or other public entities.

AGGRAVATED OFFENCE
A crime or tort that becomes worse or more serious due to certain circumstances that occur or are present during the commission of the crime or tort, for example, possession of a deadly weapon or reckless disregard for other people's safety. The perpetrator of an aggravated offence is usually subject to more severe penalties than for unaggravated forms of the offence.

ALLEGED OFFENDER
A person who has been accused of a crime or another offence, but has not yet been proven guilty.

APPELLATE INSTANCE
Appellate instance is the stage in legal proceedings when the unsuccessful party in a lawsuit resorts to a superior court empowered to review and change a final decision made by a lower court on the ground that the decision was based upon an erroneous application of law.

APPELLATE JURISDICTION
Appellate jurisdiction is the power of a superior court to review and change a final decision made by lower courts, on the ground that the decision was based upon an erroneous application of law. Depending on the type of case and the decision below, appellate review primarily consists of: an entirely new hearing; a hearing where the appellate court gives deference to factual findings of the lower court; or review of particular legal rulings made by the lower court.

BRIBERY
The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc.). The act of offering a bribe is commonly referred to as active bribery and the act of accepting the bribe as passive bribery.

BURDEN OF PROOF
Burden of proof is a duty placed upon a civil or criminal defendant to prove or disprove a disputed fact. Burden of proof can define this duty, or it can define which party bears this burden. In criminal cases, the burden of proof is placed on the prosecution, who must demonstrate that the defendant is guilty before a jury may convict him or her. But in some jurisdictions, the defendant has the burden of establishing the existence of certain facts that give rise to a defence, such as the insanity plea. In civil cases, the plaintiff is normally charged with the burden of proof, but the defendant can be required to establish certain defences.

CIVIL LAW
A body of law derived and evolved directly from Roman Law. The primary feature of civil law is that laws are struck in writing. They are codified, and not determined, as in the common law, by the opinions of judges.

CIVIL PROCEEDINGS
In civil proceedings, civil actions are brought by entities, persons or the state to obtain remedy for damage suffered as a result of a defendant's actions.

COMMON LAW
A body of law based on court decisions, the doctrines implicit in those decisions, and on customs and usages rather than on codified written laws. Common law forms the basis of the legal system in England and many other English-speaking countries. Most former British colonies have a legal system based on common law.

CONTINUOUS OFFENCE
A continuous offence is alleged where a defendant is said to have committed a continuous series of closely linked offences. For example, if an act of bribery is repeated.

CRIMINAL PROCEEDINGS
Criminal proceedings are actions brought by the state against an individual or a legal entity such as a business.

DEFENDANT
A person or legal entity against whom an action or claim is brought in a court of law.

DISCIPLINARY PROCEEDINGS
Disciplinary proceedings include sanctions taken against a public or private sector employee, which are based on contracts or other legal obligations that arise out of the worker's individual position or employment, rather than the general obligations created by criminal or administrative law.

EMBEZZLEMENT
When a person holding office in a government institution, organisation or private company dishonestly and illegally appropriates, uses or traffics the funds and goods they have been entrusted with for personal enrichment or other activities.

EXTENSION
With regards to statutes of limitation, extension prolongs the limitation period for a specific length of time. Grounds for extension vary from one jurisdiction to another, but can include the requirement of special time-consuming investigative measures.

FELONY
A grave crime, such as murder, rape, or burglary. A felony is punishable by a more stringent sentence than that given for a misdemeanor.

FIRST INSTANCE
The beginning or the first hearing of legal proceedings. The first instance takes place in a lower court.

GRAND CORRUPTION
Acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good Grand corruption is usually (but not always) synonymous with political corruption.

ILLICIT ENRICHMENT
The corrupt act of illicit enrichment may be defined as a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income.

IMMUNITY
For the purposes of this report, immunity refers to the exemption from legal prosecution for politically exposed persons. In some countries politicians are granted political immunity for actions they carry out in performance of their duties in order to prevent politically motivated legal attacks.

IMPUNITY
The exemption from legal punishment.

INDICTMENT
A written statement charging a party with the commission of a crime or other offence.

INSTANCE
An action or stage in a legal proceeding or process.

INTERRUPTION
With regards to statutes of limitation, when interruption occurs, a new limitation period, usually identical to the previous one, begins to run. Grounds for interruption vary from one jurisdiction to another, but often include developments in proceedings, such as the commencement or the filing of the case to court.

INVESTIGATION
The process of uncovering the facts and circumstances surrounding an offence. When statutes of limitation apply to the investigation period, the investigation must be completed and the charges must be brought within the period of limitation.

MISDEMEANOUR
A minor offence or transgression of the law, less heinous than a felony.

MONEY LAUNDERING
The process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities.

MUTUAL LEGAL ASSISTANCE
Mutual Legal Assistance (MLA) is the formal process through which countries request and provide assistance in obtaining evidence located in one country to aid criminal investigations or proceedings in another country.

OBSTRUCTION OF JUSTICE
The obstruction of justice may be defined as the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage, to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of a crime or other offence.

OFFENDER
A person who has been found guilty of a crime or another offence.

PERMANENT OFFENCE
An illegal activity that occurs over a period of time without cessation, for example, the operation of a human trafficking network.

PROSECUTION
The institution and conduct of legal proceedings against a person. When statutes of limitation apply to the period of prosecution, the prosecution must be finalised and a judgement reached within the period of limitation.

RELATIVE LIMITATION PERIOD
The relative limitation period is the maximum period within which a criminal or civil action can be brought against an alleged offender, but which can be prolonged due to specific grounds for suspension, interruption or extension.

REPOSE OF SOCIETY
Society being in a state of peace and tranquillity. Statutes of limitation are designed to contribute to the repose of society. The prosecution and punishment of old crimes recalls ill feeling and prevents social healing of an old conflict and its negative consequences.

STATUTES OF LIMITATIONS
Statutes of limitations are statutory rules that set the maximum period within which a criminal or civil action can be brought against an alleged offender. Statutes of limitations, also called limitation periods, promote fairness and the efficiency of investigative and judicial proceedings.

STATUTES OF REPOSE
Statutes of repose is the term used for the absolute limitation period in civil proceedings.

SUBPOENA
A court order requiring a person to appear in court to give testimony. It is a punishable offence not to appear when a subpoena is decreed.

SUSPENSION
With regards to statutes of limitation, suspension functions like a break or pause. Once the suspension has lapsed, the limitation period continues running. Grounds for suspension vary from one jurisdiction to another, but often include immunity or illness of the defendant.

TO PREJUDICE ONE'S RIGHT TO A FAIR TRIAL
To have a detrimental effect on one's right to a fair trial.

TORT
A civil wrong, other than a breach of contract, which the law will redress by an award of damages. A civil suit can be brought against the perpetrator of a tort.

TRADING IN INFLUENCE
The promise, offering or giving to a person, or the solicitation or acceptance by a person, directly or indirectly, of an undue advantage in order that the person abuse his real or supposed influence with a view to obtaining an undue advantage for the original instigator of the act or for any other person. Trading in influence is also commonly divided into its active form (giving an advantage in exchange for influence) and its passive form (requesting or accepting an advantage in exchange for influence).

WHISTLEBLOWING
Whistleblowing is the disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action. Early disclosure of wrongdoing or the risk of wrongdoing can protect human rights, help to save lives and safeguard the rule of law. Whistleblowing is increasingly recognised as an anti-corruption tool.

1. INTRODUCTION, MAIN FINDINGS AND RECOMMENDATIONS

INTRODUCTION

Statutes of limitations (SoL) are statutory rules that set the maximum period within which a criminal or civil action can be brought against an alleged offender. SoL, also called limitation periods, promote fairness and efficiency in investigative and judicial proceedings and contribute to the repose of society.

However, limitation periods can also constitute obstacles in the prosecution of offences because, in practice, they typically include the prosecution phase of proceedings, i.e. even if charges are brought against an alleged offender, the proceeding can end due to the limitation period. Particularly in the case of corruption-related offences, which often come to light after a long passage of time, standard SoL provisions can lead to impunity if they are overly short or do not provide for sufficient flexibility to allow prosecution. An additional concern relates to cross-border corruption cases, as international legal cooperation can delay proceedings significantly.

All relevant international bodies have highlighted that adequate statutes of limitations are critical to the effective prosecution of corruption, and have developed instruments that stipulate related provisions.[1] The OECD Working Group on Bribery (WGB) and the Council of Europe's Group of States against Corruption (GRECO) included the assessment of SoL in their review mechanisms regarding the implementation of the related conventions.[2]

However, so far there is no detailed international standard regarding corruption-related statutes of limitations, and international institutions have not always provided clear and consistent guidance to their member states. The OECD WGB has stressed that the lack of cross-cutting research on this issue impedes an appropriate assessment of whether statutes of limitations are adequate for the investigation and prosecution of the offence of foreign bribery.[3]

This report reduces this gap by providing an overview of SoL in relation to corruption and corruption-related offences across the European Union (EU). It explores the relevance of SoL for the fight against corruption, analyses problems in the enforcement of anti-corruption law and identifies good practice across the EU.

TANGENTOPOLI
A SHOW-CASE FOR THE RELEVANCE OF STATUTES OF LIMITATIONS TO ANTI-CORRUPTION LAW ENFORCEMENT

Tangentopoli (literally 'the city of bribes'), also known as 'Clean Hands', was a series of judicial investigations involving politicians and public officials in the Milan area. This scandal which exploded in 1992 uncovered the spread of bribery and illicit funding to parties involving ministries, members of parliament and businessmen.

After the preliminary hearings, 635 people (almost 20 per cent of the total) were acquitted. Of these, 314 acquittals (49 per cent) were because the expiry of SoL meant the case could not be prosecuted. After the trial, 40 per cent of cases were dismissed, with 57 per cent of those due to the expiry of SoL – not least because the courts were unable to manage this volume of proceedings.

Additional data shows that of the 4,520 people recorded in the General Register of Crimes' Notices of the Court of Milan, 586 (13 per cent) were acquitted because of SoL.[4]

Another relevant issue emerging from this study is that the majority of cases which expired due to SoL did not even reach the trial phase because the first phase of the proceeding, the investigations, could not be completed in time.

COVERAGE OF THE REPORT

The report builds on national research from all 27 EU member states. The national data collection was carried out at two levels. In 11 countries (Austria, Bulgaria, Czech Republic, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Romania and Slovakia), in-depth studies of the issue were conducted by respective Transparency International (TI) national chapters. In the other 16 EU member states,[5] an overview assessment was carried out. The findings were discussed at a meeting of international experts, with representatives from the OECD WGB and the United Nations Office on Drugs and Crime (UNODC).

The research covered all corruption and corruption-related offences as defined in the United Nations Convention against Corruption (UNCAC), i.e. bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, obstruction of justice, and money-laundering. It covered the commission of these offences, but also the participation, attempt and conspiracy to commit corruption-related offences. Money laundering was included because of its intrinsic link to corruption: in order for corrupt offenders to enjoy the benefits of their illicit activities, they must hide the origin of their funds and eventually convert them into legal funds. The research assessed the relevance of SoL for anti-corruption law enforcement in the different bodies of law (criminal, civil, administrative and disciplinary proceedings) as well as in the different stages in the investigation and prosecution of offences.

However, the comparability of data across countries is limited because not all EU jurisdictions have translated these offences into their national law. Corruption offences may also be regulated in different ways in individual countries, with related implications for the duration of SoL.

IMPUNITY BECAUSE OF THE PASSAGE OF TIME

In September 2003, a Lithuanian judge dismissed a criminal case where defendants had been charged for the embezzlement of US $2.6 million. In 2007 the Judicial Commission of Ethics and Discipline refused to impose disciplinary liability on the judge with reference to the fact that the three-year period of disciplinary SoL had expired.[6]

METHODOLOGY OF THE RESEARCH

This report is part of a European Commission co-funded project. The methodologies for both approaches – the in-depth and the overview studies – were jointly developed by the project partners, i.e. the TI Secretariat and the 11 TI national chapters in Austria, Bulgaria, Czech Republic, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Romania and Slovakia. Information was gathered through a desk review, questionnaires and interviews with local experts. The desk review included the examination of relevant legal provisions and academic papers, assessments and reports by international bodies such as the OECD WGB and GRECO and the collection and analysis of statistics about the length of SoL periods, as well as the percentage of proceedings closed due to SoL. This information was complemented with insights provided by prosecutors, judges, academics, officials from interior ministries and local anti-corruption agencies, and civil society representatives. The national studies, methodologies and a related background paper can be accessed at the TI website www.transparency.org. The 11 in-depth studies can also be found on the websites of each country's TI national chapter.

MAIN FINDINGS

Across the European Union, impunity for corruption and corruption-related offences is a matter of significant concern. The role played by SoL in this context differs widely from country to country and is closely linked to the overall efficiency of enforcement agencies and the judiciary.

SWEDISH INVESTIGATION INTO ALLEGEDLY CORRUPT EXPORT DEALS DROPPED DUE TO STATUTES OF LIMITATIONS

In June 2009, the Swedish prosecutor Christer van der Kwast closed three investigations into SAAB's involvement in allegedly corrupt export deals with the Czech Republic, Hungary and South Africa. He stated that there was evidence which clearly indicated that the case was "very serious, both in terms of the systematic approach and the amount. It involves hundreds of millions of Swedish crowns in hidden payments in several countries, and there is strong reason to believe that bribery also has occurred." The inquiries examined evidence from the middle of the 1990s to the beginning of this millennium. However, the period of limitation did not allow for the prosecution of incidences that occurred before July 2004. Mark Pieth, chairman of the OECD anti-bribery working group, expressed concerns about the halt of the investigation. "It raises the question whether Sweden is really committed to the OECD convention," he said in an interview.[7]

GENERAL FINDINGS ABOUT THE REASONS FOR CORRUPTION-RELATED IMPUNITY

- The lack of detection of corruption was identified as a key problem across the EU. Corrupt behaviour is usually of benefit to the parties involved and in most cases there is no immediate victim who can bring charges. The clandestine nature of corrupt behaviour means that it may never come to light unless reported by a third person. Therefore, the importance of whistleblowing[8] and the need for effective protection of whistleblowers was pointed out as a major issue that needs to be addressed in most European countries.
- The lack of human resources and expertise of law-enforcement -bodies and judicial staff were identified as further major obstacles to the effective investigation and prosecution of corruption cases across the EU. Incidences of corruption are often difficult to discover, investigate and prosecute. In most countries, qualified investigative manpower to pursue corruption cases and economic crime in general is lacking.
- In most European countries it is lengthy proceedings, sometimes combined with high levels of bureaucracy and excessive requirements of proof, which constitute serious obstacles to anti-corruption law enforcement. In such a context, SoL are often too short to prosecute crimes, particularly if there are not sufficient options to expand the limitation period if necessary.
- In many European countries, there is also a lack of trust in law enforcement which results in unwillingness to report wrongdoing,reinforcing the lack of detection of corruption cases.

SPECIFIC FINDINGS ABOUT THE STATUTES OF LIMITATIONS REGIME IN EU MEMBER STATES

- In some countries, particular aspects of the SoL regime constitute serious problems: in Greece, Italy and Portugal, proceedings can effectively run out of time even if an offender has been found guilty in the first instance. In addition, in Greece, there is an extremely favouralbe SoL regime vis-a-vis parliamentarians and members of the government.
- In France, statutes of limitations for most corruption-related offences are three years. Even though there are mechanisms for suspension of the limitation period, such a short limitation period cannot guarantee effective prosecution. In Spain, statutes of limitations are very short for some corruption offences, e.g. active bribery, while they can be considered adequate for others, such as money laundering.
- In the majority of European jurisdictions, the SoL regime has some weaknesses or loopholes, such as the absence of immunity or of a request for mutual legal assistance as a ground for suspension of the limitation period. While in most of these jurisdictions the research did not detect corruption cases acquitted due to these weaknesses, it cannot be guaranteed that they will not cause impunity of alleged offenders in the future and they should therefore be adjusted.
- At the same time, several jurisdictions provide good practice such as the application of SoL exclusively for the investigation phase of proceedings, or mechanisms to take the specificities of corruption cases into account.
- Overall, the research showed that SoL have particularly important implications for political and grand corruption, cases involving high-level politicians and complex cases which may have a cross-border dimension requiring international cooperation.
- In many European countries, recent reform efforts have led to an improvement of SoL regimes for prosecuting corruption-related crimes. In several cases, SoL periods were lengthened significantly or the grounds for suspension or interruption were extended. In contrast, recent reforms in Italy have further shortened the limitation periods.

LACK OF DATA ABOUT PROCEEDINGS CLOSED DUE TO STATUTES OF LIMITATIONS

As mentioned above, the national research for this project included the collection and analysis of statistics about the percentage of proceedings closed due to SoL. However, this data was only available in 10 of the 27 countries studied. Even where statistics could be collected, they do not show cases that had not even started because they were reported late, and officers could already predict that investigation or prosecution would not be completed within the set time period.[9] It was pointed out by several researchers that the real number of cases ending indirectly due to SoL is likely to be significantly higher than statistics can show. This renders the findings inconclusive.

The available data shows that, in most cases, less than one per cent of investigations and proceedings are closed due to SoL, although there are some exceptions which show significantly higher numbers. In Bulgaria and Hungary, 25 or even 32 per cent of criminal investigations were closed in some years. However, there is no information as to whether this was due to SoL or for other reasons, such as a lack of evidence.

Of particular concern are jurisdictions with a high number of criminal court proceedings closed due to SoL. The figures are exceptionally high for Italy: since 2005, 10 to 13 per cent of all criminal court proceedings have been closed due to SoL, meaning that one in 10 trials ended with impunity for the alleged offender. In Slovakia, up to four per cent of criminal court proceedings have been closed in the past years.

RECOMMENDATIONS

It was pointed out by many researchers and local experts that inefficiencies in law enforcement and the judiciary are key concerns for the effective prosecution of corruption, and need to be addressed.

General conclusions can be drawn regarding SoL regimes specifically, even though they need to be assessed carefully in the context of each jurisdiction. These conclusions lead to the following recommendations to national policymakers:

1. THE GRAVITY OF CORRUPTION CRIMES NEEDS TO BE ADEQUATELY REFLECTED IN DOMESTIC LAW

SoL periods are generally calculated in relation to the gravity of the offence. For limitation periods to be sufficiently long, it is critical that corruption-related offences be adequately weighed. If, as in France, most corruption offences are classified as misdemeanours and not as felonies, the resulting SoL is likely to be too short (three years, in this case).

WHAT THE GRAVITY OF THE CRIME MEANS FOR THE LENGTH OF STATUTES OF LIMITATIONS

In the Portuguese Freeport Case, involving the waiver of environmental restrictions, the question of whether the case has prescribed depends on how the Prosecutor's Office qualifies the type of crime. If it is qualified as 'bribery with breach of duties', a 10-year SoL period applies. If it is 'bribery without breach of duties', it is only five years. In the latter case, the criminal procedure itself should be dismissed.

2. LIMITATION PERIODS FOR SERIOUS CORRUPTION OFFENCES SHOULD BE 10 YEARS OR LONGER

The emerging guidance from relevant international bodies for a minimum SoL period for corruption offences is five years or more. However, particularly in complex corruption cases and in the context of slow, inefficient judicial proceedings, five years may not be enough to ensure the effective administration of justice. A SoL period of at least 10 years would reduce the risk of complex corruption cases prescribing. In the context of inefficient and lengthy proceedings, as well as in international corruption cases, even a limitation period of 10 years might not provide sufficient time, unless complemented by flexible grounds for suspension or interruption of proceedings.

3. THE CALCULATION OF STATUTES OF LIMITATIONS SHOULD REFLECT THE SPECIFICITIES OF CORRUPTION CASES

As 'covert' offences, many cases of corruption do not come to light for many years, for example, until a regime change occurs or when an official or company employee leaves his or her post. Therefore, in the case of continuous offences, SoL should begin running from the moment the last offence took place and in the case of a permanent offence, they should be calculated from the date on which the illegal activity ceased.

4. THE REGIME SHOULD ENSURE EXTENSIONS FOR CROSS-BORDER CASES

Given the increasingly transnational character of corrupt practices, the SoL regime needs to adequately reflect potential delays created by international cooperation, such as requests for mutual legal assistance (MLA), which can take many months or even years to be granted. In the case of an MLA request, the SoL regime should provide for additional time, for example, through the suspension of the limitation period, in order to ensure the effective prosecution of international corruption cases.

5. NO IMPUNITY FOR POLITICIANS AND MEMBERS OF THE GOVERNMENT

In corruption cases involving politicians or government members who are protected by immunities, either as alleged offenders or as parties involved in the proceedings, SoL should provide for suspension or interruption as long as the post-holder is in office.
This will enable the case to be taken up when the official or politician leaves his or her post.

6. NO STATUTES OF LIMITATIONS AFTER A DECISION OF FIRST INSTANCE

A SoL regime should not allow for proceedings to prescribe after the first instance. Otherwise, there is a risk that an alleged offender is found guilty in the first instance, but a sentence cannot be enforced because the case prescribed during the appellate instances.
In order to ensure the adequate prosecution of corruption offences it is even questionable whether there should be any limitation period after formal charges have been presented to the court for hearing.

7. SYSTEMATIC COLLECTION OF STATISTICS ABOUT RELEVANCE OF STATUTES OF LIMITATIONS FOR IMPUNITY

Data on criminal cases closed due to SoL should be collected and made available in order to identify the impact of SoL on the administration of justice, both in general and specifically for corruption and corruption-related offences. Specific reasons for the closure of cases should also be recorded in order to identify and address weaknesses in the system.

THE USEFULNESS OF DATA FOR GUIDING POLICY REFORMS

In Portugal, between 2004 and 2008, only 0.5 per cent of corruption-related cases were dismissed because of SoL. However, the very few cases that end in impunity are usually the ones involving the greatest sums of money and known political actors. Therefore, the related provisions need to be adapted because they leave loopholes for grand corruption to end in impunity. This conclusion is drawn from detailed data analysis by Portuguese research institutes.[10]

2. THE NATURE OF STATUTES OF LIMITATIONS

2.1 THE RATIONALE

The vast majority of jurisdictions provide for limitation periods. The main rationale for the concept is:

- To promote legal certainty, fairness and accuracy of criminal proceedings by protecting individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time.
- To improve efficiency by encouraging prosecution authorities to divert scarce law-enforcement resources from offences which were committed a long time ago with low probability of successful prosecution to the pursuit of more recent offences. SoL periods are also intended to improve efficiency by encouraging the prompt investigation and prosecution of criminal activity, consistent with article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, which provides that 'everyone is entitled to a fair and public hearing within a reasonable time'.
- To contribute to the repose of society which constitutes the ultimate goal of criminal law. The prosecution and punishment of crimes committed long ago stirs up ill feeling and prevents social healing of old conflicts and their negative consequences. Due to the passage of time, the purpose of punishment as well as the need for restitution may become irrelevant.

Except for two countries (Ireland and the United Kingdom), all EU member states provide for limitation periods for criminal offences.[11] The most serious crimes are not subject to any limitation period. These include war crimes, crimes against humanity, genocide, acts of terrorism and similar offences. In some jurisdictions, intentional homicide is excluded as well. In Austria, there are no SoL for offences requiring life imprisonment or sentences of 10 to 20 years, while in Italy, all offences leading to life sentences are excluded from SoL.

2.2 THE RELEVANCE FOR CRIMINAL, CIVIL, ADMINISTRATIVE AND DISCIPLINARY PROCEEDINGS

In the context of this research, SoL for the four different bodies of law were assessed in the 11 in-depth studies. For the other 16 EU Member States, the research was limited to criminal and civil proceedings. Among the researchers and the experts interviewed the view was widespread that criminal proceedings are by far the most relevant body of law for the assessment of the link between limitation periods and impunity for corruption-related offences. Therefore this report focuses on criminal proceedings.

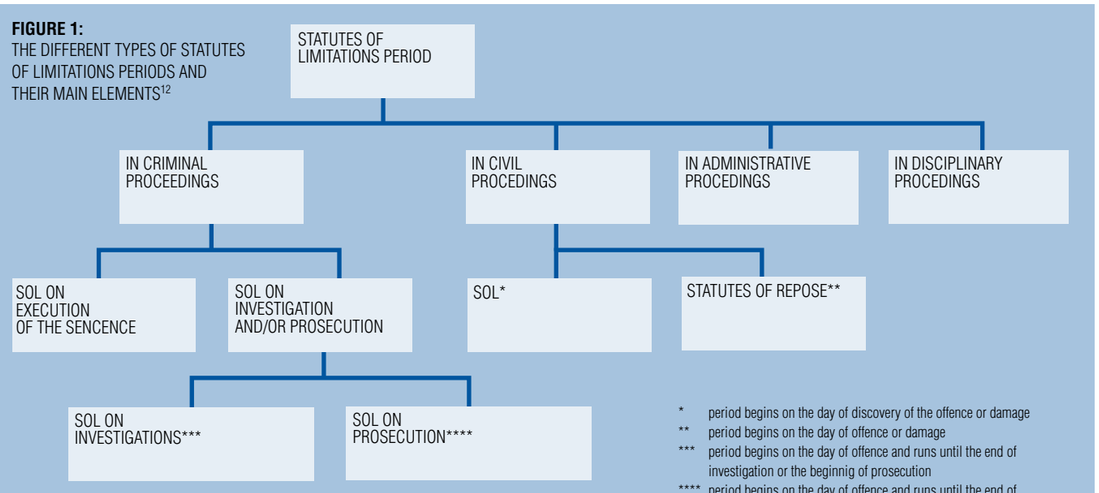
CRIMINAL PROCEEDINGS

Criminal proceedings are actions brought by the state against an individual. Corruption cases are often treated under criminal law, because they are usually offences for which penal sanctions apply. Large-scale corruption cases are often complex and combine a multitude of offences, which can also be of a civil, administrative or disciplinary nature.

LIMITING TIME DELAYS WITHOUT STATUTES OF LIMITATIONS – THE CASE OF IRELAND

In Ireland, rather than imposing limitation periods on the prosecution of crimes as in civil law jurisdictions, the common law doctrine of delay prevails. Under this, the defence may make submissions asserting that the defendant's right to a fair trial is prejudiced by the effects of the passage of time. The charges will be dismissed if his or her right to a fair trial is found to be prejudiced by the culpable delay of the prosecution. Where delay is pleaded, the case is considered on its individual merits within the parameters set by the jurisprudence on delay.

FIGURE 1:
THE DIFFERENT TYPES OF STATUTES OF LIMITATIONS PERIODS AND THEIR MAIN ELEMENTS[12]



CIVIL PROCEEDINGS

In civil proceedings, actions are brought by entities, persons or the state to obtain remedy for damage suffered as a result of a defendant's actions. Civil SoL limit the time in which a plaintiff can bring a lawsuit against another person. In the context of the fight against corruption, civil proceedings are relevant because civil remedies enable persons who have suffered damage resulting from acts of corruption to receive fair compensation. In countries that do not recognise criminal liability for legal entities, such as companies, civil remedies enable victims to take legal action against them.

ADMINISTRATIVE PROCEEDINGS

An administrative proceeding is a non-judicial determination of fault or guilt and may include penalties of various types. The related limitation periods are of the most varied forms and come under different regulations. In general, the SoL periods in administrative proceedings are very short and may constitute an obstacle to the effective fight against corruption, especially in countries where legal persons can only be sanctioned through civil or administrative proceedings. They may also constitute obstacles for the prosecution of violations of party funding regulations.

DISCIPLINARY PROCEEDINGS

Disciplinary proceedings include sanctions taken against a public- or private-sector employee, which are based on contracts or other legal obligations that arise out of the worker's individual position or employment, rather than the general obligations created by criminal or administrative law. These can include terms or conditions of employment contracts, public service standards or codes of practice and the rules applied to professional groups such as doctors and lawyers. In the context of combating corruption, disciplinary proceedings are relevant because of the possibility of imposing disciplinary sanctions, such as prohibition to practise a profession, which could not be imposed by criminal law.

2.3 THE LENGTH OF STATUTES OF LIMITATIONS

Across the EU, the length of SoL in criminal proceedings varies widely. Generally, it is calculated in relation to the gravity of the crime, i.e. an offence with a higher sentence, such as 10 years' imprisonment, will have a longer SoL than an offence which is considered less serious and faces a maximum sentence of three or five years. Yet the detailed calculation is very different from country to country. In some countries, for example Hungary[13] and Italy, the limitation period is equal to the maximum detention penalty for the offence. In others, such as Austria, Greece, Portugal, Romania, Slovakia and Slovenia, the period is related to the maximum penalty but not necessarily equal to it. For example, in Romania, the limitation period for prosecution is five years plus the length of the penalty to be executed.

In many countries, a distinction is made between shorter SoL periods for basic forms of offence, and longer ones for the aggravated form of these offences. In Slovakia, for example, the offence of accepting a bribe can have SoL of five, 10 or 20 years, depending on whether the offence is aggravated or not.

In other countries the length of SoL is calculated related to the category of crimes. In Belgium there are three categories of crime: serious crime, crime and misdemeanour. Each of these categories has sub-categories and SoL are calculated accordingly.

Regarding special limitation periods for corruption offences, only Portugal has recently approved such measures, which will come into force in 2011. The Romanian anti-corruption law defines special penalties for corruption offences, which indirectly lead to special limitation periods.

2.4 THE STARTING POINT OF THE LIMITATION PERIOD

SoL for civil law offences are usually calculated from the day the offence was discovered. In many countries, such as Austria, Czech Republic and Slovakia, among others, they count only from the day the damage is known to the injured party. Only exceptionally, for example in Malta, do civil proceedings run from the day that the act giving rise to the damages occurs, and not from the moment the damage was discovered.

In criminal law, however, the limitation period usually begins to run on the day on which the crime was committed. For corruption cases, this is a significant problem because many corruption offences do not come to light for many years, for example, until a regime change occurs or when an official leaves his or her post.

However, many European jurisdictions have implemented mechanisms that account for the specificities of corruption and corruption-related offences in SoL – see table 7 page 35.

EXTENDING SOL THROUGH THE IDENTIFICATION OF THE MOST SERIOUS OFFENCE

Prosecutors and judges can seek to qualify, where possible, corruption offences as offences which are considered more serious under national law. For example, judges in France have qualified bribery offences as the misuse of corporate assets or receiving of misused corporate assets in order to make it possible to sanction acts which otherwise would not have been punishable (should SoL expire), or which would have been difficult and taken longer to prove.[14]

FRANCE:
JURISPRUDENCE DETERMINES
LATE START OF STATUTES OF LIMITATIONS

French SoL are particularly short and have been considered a serious obstacle for the prosecution of corruption offences.[15] However, related leads to a significant delay of the starting point of SoL, which can help to overcome the problem of impunity. The Cour de Cassation, France's highest appellate jurisdiction, has ruled that the offence of bribery, committed from the moment the agreement between the briber and the bribed person is concluded, is renewed on each occasion that the agreement is acted upon.[16] As a consequence, the triggering of SoL is moved forward from the day the bribery agreement was concluded to the day of the final payment or the last day of receipt of the advantage that was promised.[17]

2.5 ASPECTS OF CRIMINAL PROCEEDINGS COVERED

Limitation periods may concern the phase of investigation and prosecution of an offence as well as the phase of the execution of the sentence. The various regimes can be combined in different ways.

The calculation of SoL for investigation indicates the time limit for finalising the investigation and initiating prosecution (i.e. the investigation must be completed and the charges must be brought within the period of SoL) while the calculation of SoL for prosecution indicates the time limit for finalising prosecution and reaching a judgment.

Limitation for the execution of sentence applies if a sentence is not carried out or is suspended. These types of SoL periods are meant to deal with very specific situations, where, for example, a sentence is not executed due to negligence. However, such situations rarely occur in practice and SoL periods for execution of the sentence are almost never enforced. They have therefore not been assessed in detail in the framework of this project.

TABLE 1:
OVERVIEW OF ASPECTS OF CRIMINAL PROCEEDINGS COVERED[18]

Countries with SoL for investigation	Countries with SoL for prosecution	Countries with SoL for execution of sentence
Austria[19]	Belgium	Austria
Estonia	Bulgaria	Belgium
Finland	Czech Republic	Bulgaria
France	Denmark	Estonia
Greece	Estonia	Greece
Hungary	Finland	Hungary
Latvia	France	Italy
Luxembourg	Germany	Latvia
Malta	Greece	Luxembourg
the Netherlands	Hungary	the Netherlands
Poland	Italy	Poland
Romania	Lithuania	Portugal
Slovenia	Luxembourg	Romania
Spain	Malta	Slovakia
Sweden	the Netherlands	Slovenia
	Romania	
	Portugal	
	Slovakia	
	Slovenia	
	Spain	

2.6 GROUNDS FOR SUSPENSION, INTERRUPTION AND EXTENSION

In most jurisdictions, SoL can be suspended, extended or interrupted for specific reasons. Suspension functions like a break or a pause, and once the suspension has lapsed, the time continues running. Extension prolongs the SoL for a specific period. while interruption means that after the interruption, a new limitation period, usually identical to the previous one, begins to run. In the enforcement of anti-corruption law one of the key concerns is whether the grounds for suspension, extension and interruption are extensive enough to allow for proper enforcement of the law.

According to some scholars, a jurisdiction should either provide for long SoL and remove any grounds for suspension, extension or interruption, or for shorter SoL with an extensive number of grounds for suspension, extension and interruption.[20] The reality, however, shows a mixture of different regimes both within and across European jurisdictions.

TABLE 2:
OVERVIEW OF FREQUENT GROUNDS FOR SUSPENSION IN EU JURISDICTIONS

Ground for suspension	Countries[21]
The alleged offender evaded the administration of justice	Estonia, Italy, Lithuania, Portugal, Slovakia, Slovenia
The alleged offender committed another crime of the same nature	Austria
The alleged offender is a minor or is sick	Czech Republic, Hungary, Lithuania, Luxembourg, Romania, Slovenia
Steps in the proceedings, such as the beginning of proceedings	Austria, Greece
Legal obstacles to the initiation or continuation of prosecution	Austria, Belgium, Bulgaria, Greece, Italy, Luxembourg, Portugal, Romania, Slovakia, Slovenia
An MLA request, international legal assistance	Hungary, Lithuania
Immunity and other statutory barriers to investigation or prosecution	Austria, Belgium, Czech Republic, Hungary, Portugal, Slovakia, Slovenia
Referral of the case to another court or to additional investigation	Italy, Belgium, Lithuania, Portugal

GROUNDS FOR INTERRUPTION

Interruption functions as a 'reset' of time: after each interruption a new limitation period, usually identical to the previous one, begins to run. Across the EU, there is a wide variety of different regimes. While the Czech Republic and Italy provide for many different provisions, Austria and Greece do not use the concept at all for criminal proceedings.

TABLE 3:
OVERVIEW OF FREQUENT GROUNDS FOR INTERRUPTION IN EU JURISDICTIONS

Ground for interruption	Countries[22]
The alleged offender committed another crime	Czech Republic, Latvia, Lithuania, Romania, Slovakia, Slovenia
Beginning of criminal prosecution	Belgium, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, Portugal, Slovakia
International or European arrest warrant	Czech Republic, Hungary
Designation of the defendant as a formal suspect	Hungary, Portugal
Notification of any procedural act to the alleged offender, such as subpoena, arresting, summoning, confrontation, etc.	Belgium, Czech Republic, Estonia, Hungary, Italy, Romania, Slovakia

2.7 THE ABSOLUTE LIMITATION PERIOD

Twelve European member states provide for an absolute SoL period period (see graph), i.e. regardless of provisions for the interruption and/or suspension of the statute, there is an overall limit to the length of the period. In Bulgaria and Romania, for example, the absolute period cannot exceed half the relative SoL period. The other countries do not have an absolute time limit for the prosecution of criminal offences, i.e. theoretically the limitation period can be interrupted or suspended indefinitely if needed.

At the same time, the new SoL regime in Slovenia, which entered into force in 2008, exclusively foresees absolute, notrelative, SoL periods. Almost all grounds for suspension were abolished in favour of a regime with long absolute SoL, i.e. a minimum of six years, but up to 20 years for serious offences.[23]

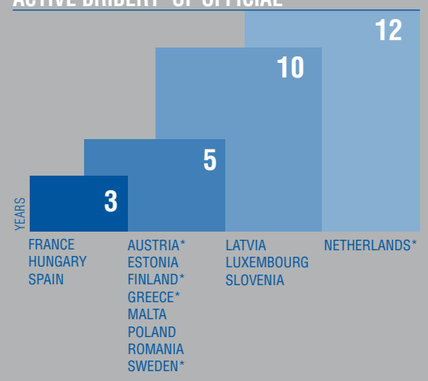
2.8 COMPARITIVE LENGTHS OF STATUTES OF LIMITATIONS FOR DIFFERENT PROCEEDINGS

2.8.1 THE LENGTH OF SOL FOR CRIMINAL PROCEEDINGS

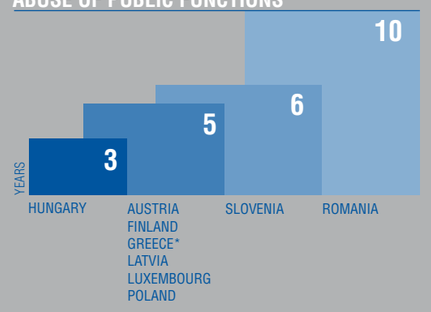
Across the EU, statutes of limitations for criminal proceedings vary widely. The tables on the following pages show the limitation periods for criminal proceedings in all EU member states except for Cyprus, Ireland and the United Kingdom where no SoL exist.[24]

TABLE 4: PERIOD OF LIMITATION (YEARS) UNTIL END OF INVESTIGATION OR INITIATION OF PROSECUTION

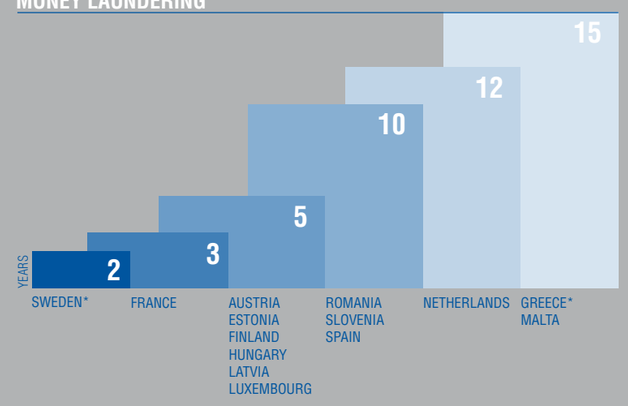
ACTIVE BRIBERY OF OFFICIAL



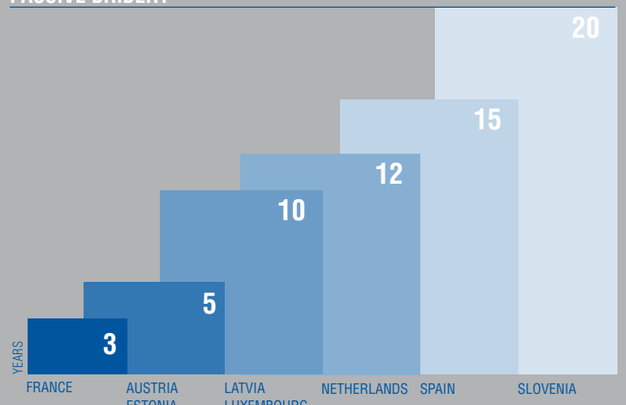
ABUSE OF PUBLIC FUNCTIONS



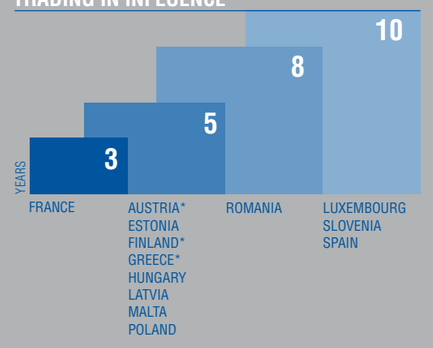
MONEY LAUNDERING



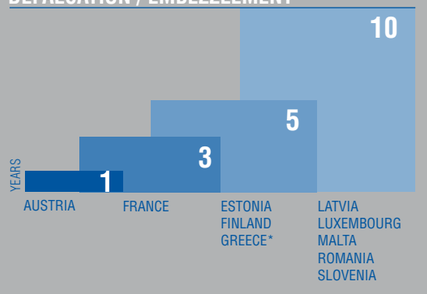
PASSIVE BRIBERY



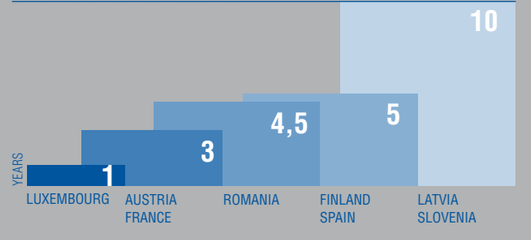
TRADING IN INFLUENCE



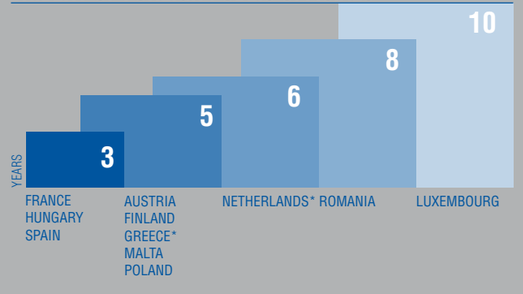
DEFALCATION / EMBEZZLEMENT



OBSTRUCTION OF JUSTICE



BRIBERY OF FOREIGN PUBLIC OFFICIALS

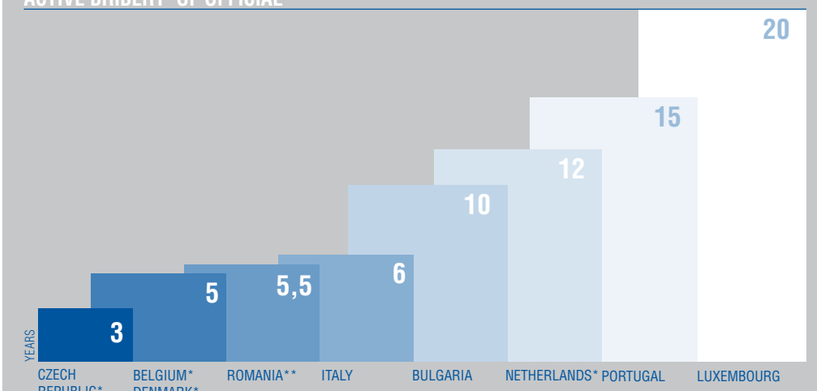


In Austria, de jure the SoL period runs until the end of prosecution, but de facto the formal accusation and sometimes even other investigative measures suspend the SoL period until the legally binding end of the proceedings.

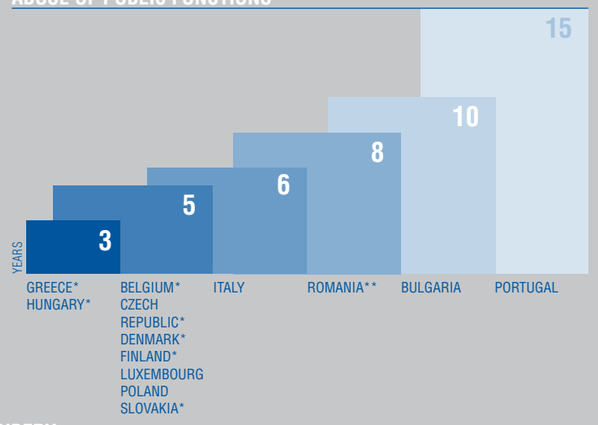
* minimum, extra given if aggravating circumstance (cp. detailed clauses)

TABLE 5: PERIOD OF LIMITATION (YEARS) UNTIL END OF PROSECUTION OR SENTENCE

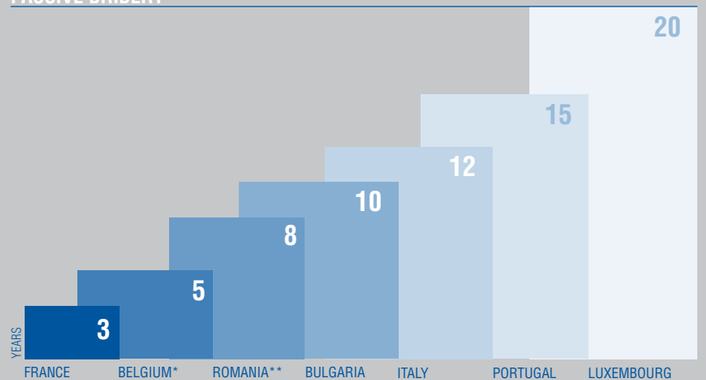
ACTIVE BRIBERY OF OFFICIAL



ABUSE OF PUBLIC FUNCTIONS



PASSIVE BRIBERY

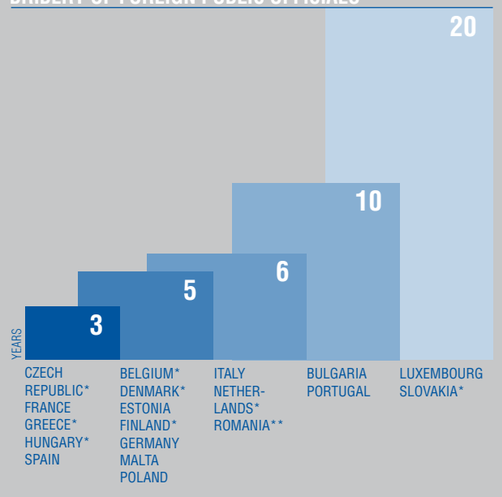


* minimum, extra given if aggravating circumstance (cp. detailed clauses)

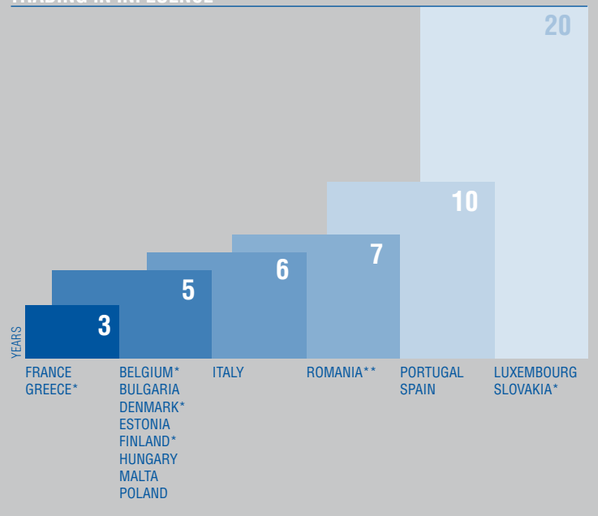
** The relative period of limitation is five years plus the length of the sentence. For the graphic comparison of data, the figures for Romania are calculated for the lowest penalty.

RELATIVE PERIOD OF LIMITATION (CAN BE EXTENDED THROUGH SUSPENSION OR INTERRUPTION)

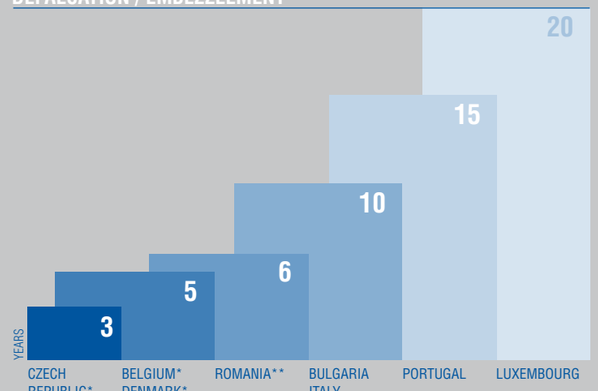
BRIBERY OF FOREIGN PUBLIC OFFICIALS



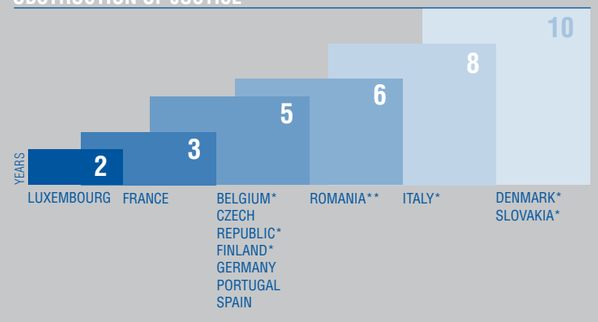
TRADING IN INFLUENCE



DEFALCATION / EMBEZZLEMENT



OBSTRUCTION OF JUSTICE



MONEY LAUNDERING

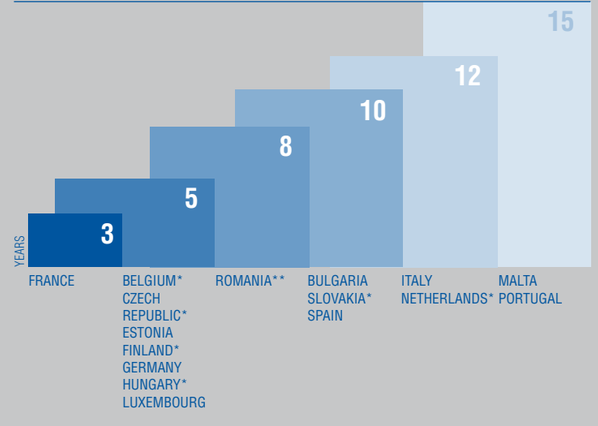
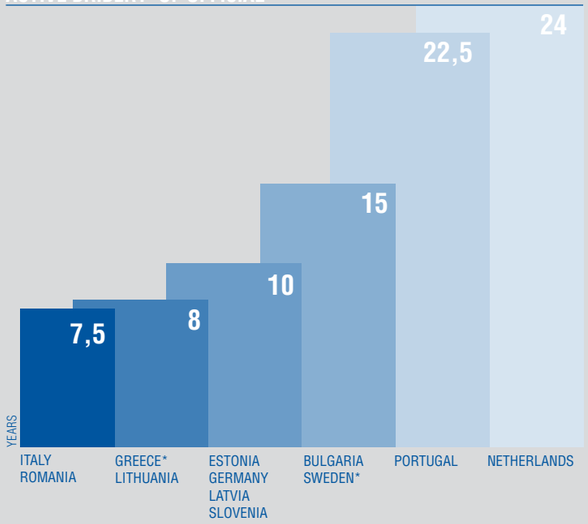


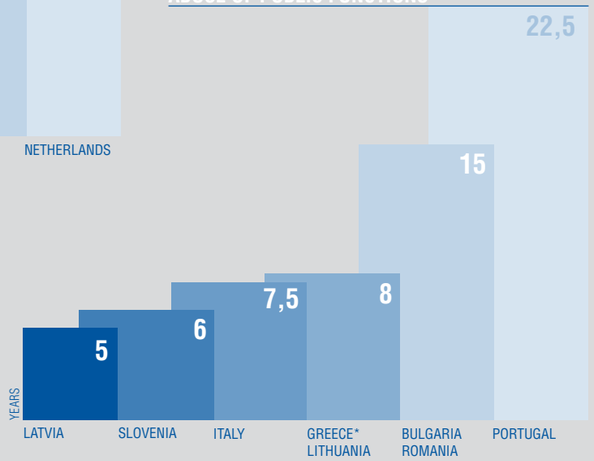
TABLE 6: PERIOD OF LIMITATION (YEARS) UNTIL END OF PROSECUTION OR SENTENCE

ABSOLUTE PERIOD OF LIMITATION (NO FURTHER EXTENSION POSSIBLE UNDER ANY CIRCUMSTANCES)

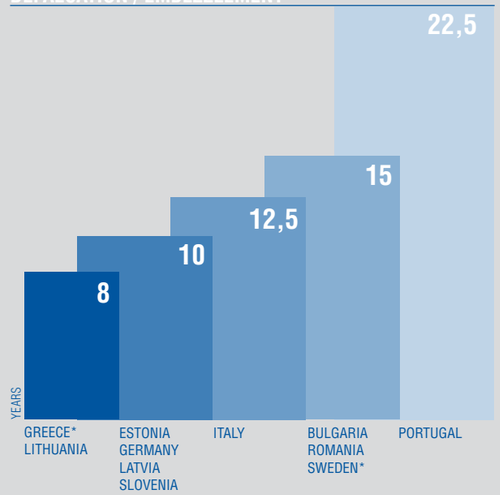
ACTIVE BRIBERY OF OFFICIAL



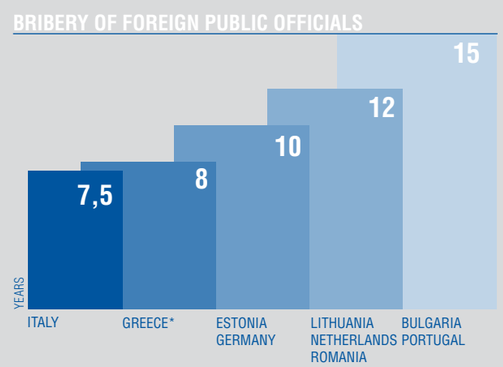
ABUSE OF PUBLIC FUNCTIONS



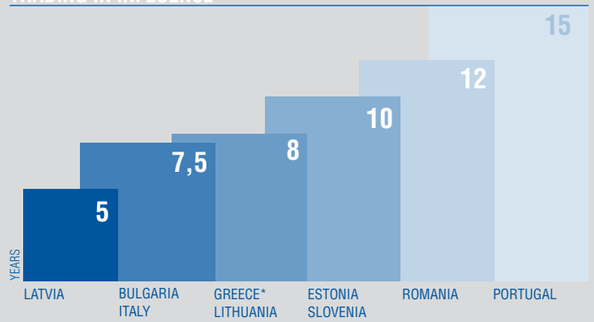
DEFALCATION / EMBEZZLEMENT



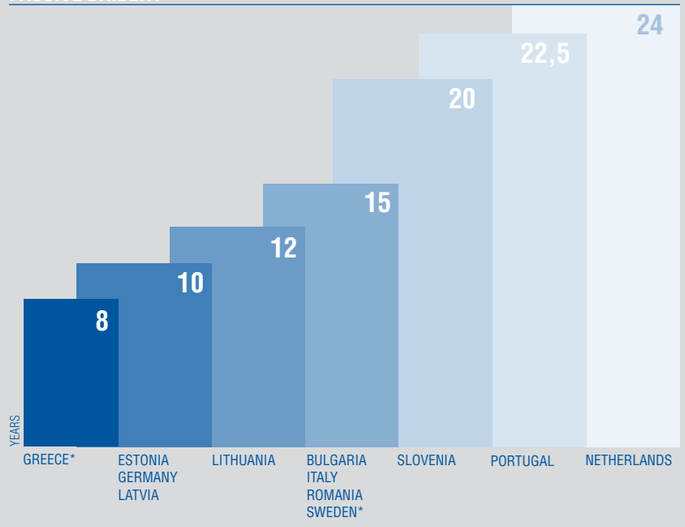
BRIBERY OF FOREIGN PUBLIC OFFICIALS



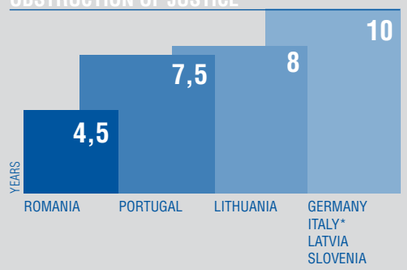
TRADING IN INFLUENCE



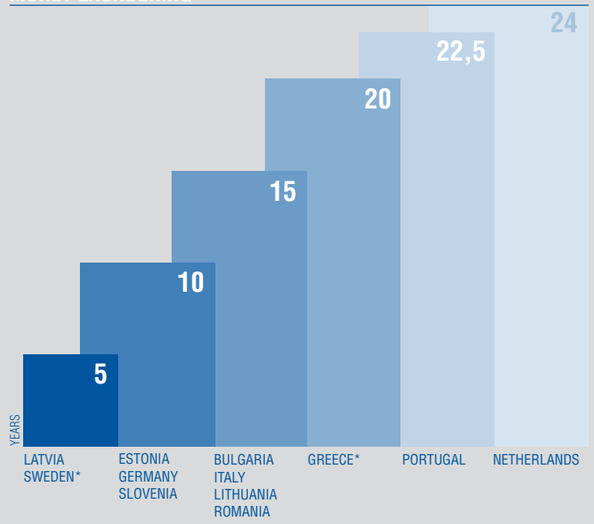
PASSIVE BRIBERY



OBSTRUCTION OF JUSTICE



MONEY LAUNDERING



* minimum, extra given if aggravating circumstance (cp. detailed clauses)

2.8.2 THE LENGTH OF STATUTES OF LIMITATIONS FOR CIVIL, DISCIPLINARY AND ADMINISTRATIVE PROCEEDINGS

SoL in civil, administrative and disciplinary proceedings also vary widely between jurisdictions.

For civil proceedings, in most cases, there are different limitation periods for different actions, and in some cases, such as Spain, the periods even vary between different regions in the country. Corporate or certain commercial disputes can also have their own SoL.

In the majority of countries, SoL for civil proceedings vary between three and five years for most offences. In Spain, the limitation period for civil proceedings against the public administration and for torts is one year after the act originating the claim took place. This is exceptionally short.

Countries such as Austria, Estonia, Finland, Greece, Slovakia and Slovenia, have an absolute period, also called statutes of repose, which can vary between 10 and 30 years.

SoL for administrative and disciplinary proceedings vary between three months and six years. Even though little evidence was found, some researchers pointed out that the shorter period might constitute an obstacle for disciplinary liability. In Austria, for example, the connection with the criminal proceedings code could be particularly relevant. This provision states that the police, prosecutor or court have the duty to inform the competent body if a criminal proceeding against a public servant is initiated or terminated. This duty of information might launch the shorter disciplinary SoL period and might therefore leave less time for disciplinary proceedings. This effect is further heightened by the fact that the short SoL period is not prolonged to the level of the SoL period for criminal proceedings if the public servant's breach of duties constitutes a criminal offence.[25]

In Latvia and Lithuania, GRECO found that current administrative SoL may be too short to ensure the effective control of political party financing. In Latvia, under the general administrative provisions, the SoL are for one year after the offence was committed. Given the deadlines for the submission of annual financial reports by political parties and the delays sometimes observed in the submission of these reports, these periods are somewhat short in the context of controlling political financing. GRECO therefore recommends in both cases that the related SoL be extended.[26]

2.9 OTHER PROCEDURAL LIMITS INTERACTING WITH STATUTES OF LIMITATIONS

In addition to SoL, in many jurisdictions there are other provisions that may limit the length of criminal proceedings. The rationale for these provisions is that there should be no unreasonable delay in criminal proceedings in any of the stages. Time limits are posed, for example, for pre-trial investigations and the gathering of evidence.

In the Czech Republic, the police need to establish within two to six months whether the offence was committed. However, this time limit can be extended. There is also a time limit for issuing an order for a trial to be held, for the preliminary hearing and for the indictment. Further multi-level approvals are needed by the police before carrying out procedural acts and there are exaggerated requirements from the Public Attorney's office concerning the formal notification of police acts.

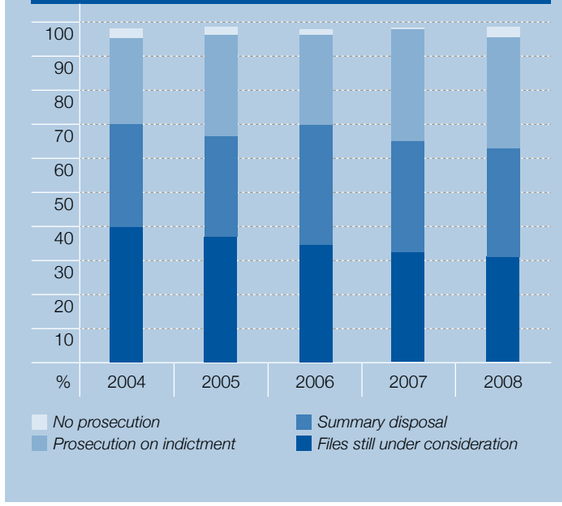
In Greece, pre-trial detention cannot exceed a six-month period, unless in light of exceptional grounds, with prior approval by the Judicial Council. In Lithuania, the accused can file a complaint if the investigation is not completed within six months of the first enquiry. In Portugal, criminal investigations must be completed within six months (and can be extended to 12 months in certain cases). Slovakia has no specific limits, but the alleged offender may appeal to the Constitutional Court if he or she considers the proceeding unreasonably delayed.

The relevance of procedural limits is particularly obvious in countries without limitation periods, such as Ireland, where official statistics on decisions to prosecute clearly show that the high evidential burden of proof in Irish criminal law is the most significant factor in decisions to end prosecutions.

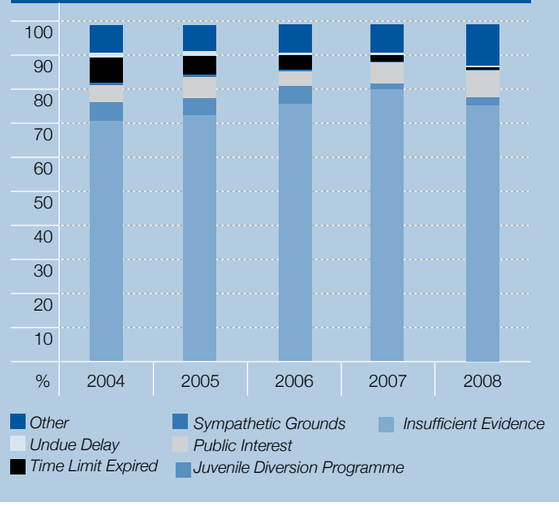
THE CASE OF IRELAND
HIGH EVIDENTIAL BURDEN AS AN IMPEDIMENT TO ANTI-CORRUPTION LAW ENFORCEMENT

The statistics reveal that around 30 per cent of cases in Ireland were not pursued in recent years, the vast majority of these due to insufficient evidence.

GRAPH 1: DIRECTION GIVEN BY THE DIRECTOR OF PUBLIC PROSECUTIONS ON FILES RECEIVED



GRAPH 2: MAIN REASONS FOR NOT PROSECUTING A CASE



2.10 RECOMMENDATIONS FROM INTERNATIONAL INSTITUTIONS

The importance of SoL in the fight against corruption is recognised in many relevant international legal instruments. The United Nations Convention against Corruption (UNCAC) provides that *'[e]ach State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice'* (Article 29). Regarding legal persons, UNCAC stipulates in Article 26, paragraph 4: *'Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions'*.

Further, the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions provides that *'any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of the offence'* (Article 6).

Even though the Council of Europe (CoE) Criminal Law Convention on Corruption does not stipulate any standard regarding SoL, GRECO has been assessing the issue in its Third Evaluation Round.[27]

The EU Convention against corruption has no relevant legal provision.[28]

In terms of criminal cases, the OECD WGB and GRECO have provided further guidance on interpretation of the terms 'adequate' and 'long' in relation to SoL periods, though once again they provide only general recommendations rather than minimum standards or best practice.

The OECD WGB, which assesses exclusively the adequacy of the framework for foreign bribery offences, has indicated that the SoL period should be calculated in accordance with a country's general conditions of enforcement of national criminal law and in light of relevant procedural rules, such as grounds for suspension or interruption. Specifically, the WGB recommended that in France, Spain and Hungary, a period of three years for certain corruption cases might be too short, and in the case of Hungary, five years would be adequate. In the context of its Third Evaluation Round, GRECO considered that the three-year SoL periods for bribery in France were too short. In Latvia, a period of two years for the offence of trading in influence was also regarded by GRECO as inadequate.

In summary, OECD WGB and GRECO have often considered five years as an adequate time for SoL while asserting that these periods need to be tailored to the justice systems and realities of each country. Thus in certain circumstances, the OECD WGB has also criticised a five-year (or higher) threshold as being inadequate, for example in Belgium, Bulgaria, Greece and Italy, where criminal proceedings tend to face lengthy delays. The OECD WGB and GRECO also highlighted that SoL should be flexible in terms of grounds for suspension, extension and interruption.

As previously mentioned, the UNCAC monitoring mechanism has only been adopted recently and as such it has not yet produced any interpretation on SoL.

By contrast, the basis for SoL standards for civil proceedings is the CoE Civil Law Convention, where the standards for the length of SoL are specific. This Convention stipulates that proceedings for the recovery of damages resulting from a corruption offence must be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware (or should reasonably have been aware) that damage had occurred or that an act of corruption had taken place. In addition, the civil law requirement that the identity of the responsible person be known is applicable in such cases.[29] Moreover, in civil proceedings most countries also prescribe a longer period beyond which proceedings may not be commenced (statute of repose), regardless of the plaintiff's date of knowledge. The CoE Civil Law Convention provides that the absolute bar on commencing proceedings should not come into effect before the expiry of 10 years after the corrupt act.[30]

2.11 RECENT AND CURRENT REFORM EFFORTS

Some European jurisdictions have recently undertaken significant reforms in this area or are in the process of related reforms, sometimes inspired by guidance from international institutions. In Latvia, for example, substantial amendments were elaborated in 2009 in line with GRECO's recommendations. Amendments were adopted in the Criminal Law regarding provisions on private and public sector bribery. Criminal liability for trading with influence was extended from two to three years for accepting an offer, and five years for offering material values. As a result, SoL periods for cases of trading influence became longer (and are now five years). In Portugal, recent changes have greatly extended SoL for many corruption-related offences. In Lithuania, new legislation has just been adopted which extends SoL for all offences, and there is a declared political will to extend SoL for misconduct in office.

Romania has adopted a new penal code, but it is not yet implemented. While the new criminal code provides for shorter penalties, leading to shorter SoL, Romania has an anti-corruption law,[31] which establishes special penalties for corruption-related offences and provides for additional tools for the investigation, prosecution and trial of corruption cases within the limitation period. For these reasons, the new regulation is seen as a positive development by local stakeholders.

In Greece, reforms intended to combat delays in the administration of justice were adopted in September 2010. The Supervisor of the prosecutor's office appointed six prosecutors to be exclusively responsible for the investigation and management of files connected with corruption and corruption-related offences. Cases considered as extremely important will be allocated to two prosecutors and will be closely followed by the supervising prosecutor.

Given that these reforms were passed recently, their effects cannot yet be assessed. However, it is important to note that they were undertaken in the spirit of reducing loopholes due to short or inadequate SoL provisions, or to improve the legislative framework in other ways.

Contrary to the general trend of providing longer SoL, recent reforms in Italy have led to their shortening. A reform in 2005 reduced SoL for most offences by half. In 2010, a new bill was presented, which is still under debate. This proposal provides for the dismissal of proceedings in relation to determined phases in the process. For serious crimes sanctioned by more than 10 years' imprisonment, SoL would end after four years for the first degree, after two years for the second degree and after one and a half years for the third degree. While both recent reform efforts have been explained by an intention to reduce the length of trials, thus providing for a reasonable duration in compliance with art. 6 of the European Convention of Human Rights, the statistics raise serious concerns about their effects: since 2005, between 10 and 13 per cent of all criminal court proceedings have been ended due to SoL, meaning that more than one in 10 trials ended with impunity for the alleged offender.[32] This number is particularly high and raises serious concerns about the efficacy of the Italian justice system.

3. WEAKNESSES AND GOOD PRACTICE

3.1 MOST SIGNIFICANT WEAKNESSES IDENTIFIED IN THE RESEARCH

Whether statutes of limitations are sufficiently long and adequate for the effective prosecution of corruption and corruption-related offences depends on a series of issues. There is a close link with the overall efficiency of the judiciary, which clearly has a strong impact on the time needed to investigate and prosecute an offence. The lack of human resources and expertise of judicial staff to investigate and prosecute corruption cases were identified as major obstacles to enforcing anti-corruption law across the EU.

Overall, the following weaknesses were identified:

3.1.1 LIMITATION PERIODS ARE NOT LONG ENOUGH TO ENSURE EFFECTIVE PROSECUTION OF CORRUPTION

In some European countries, SoL periods are too short to ensure the effective prosecution of corruption and corruption-related offences. In France, the relative SoL period for the prosecution of most corruption offences is three years. For most countries, SoL differ between various offences. In Spain, the SoL period is limited to three years in several criminal proceedings. For civil proceedings such as torts or proceedings against the public administration, the limitation period is one year after the act originating the claim took place. This is extremely short and can seriously impair the ability of victims of corruption to bring charges against those responsible.

In Greece, it is particularly striking that SoL periods for ministers are shorter than for regular citizens. The relevant law, which is also applicable to their accomplices, limits the statute of limitations for 'punishable actions' – both felonies and misdemeanours – to five years (the absolute period being 10) commencing on the day the offence was committed. In effect, due to immunity provisions, no criminal action can be brought against ministers unless and until parliament gives its consent.[33] Due to this provision, the crime may not be prosecuted at all.

Short absolute periods are particularly problematic: Italy has an absolute limitations period of seven-and-a-half years for most corruption-related offences.[34] In Finland, the limitation period can only be extended for a maximum of one year. This extension period is too short to ensure the conclusion of many cases.

3.1.2 INCLUSION OF APPELLATE INSTANCES IN THE DURATION OF STATUTES OF LIMITATIONS CAN LEAD TO IMPUNITY

Most countries provide that the periods of limitations run until delivery of the judgement at the first instance. The length of proceedings in the appellate instance is not limited by SoL. In some countries (for example, Germany, Greece, Italy, Portugal and Slovakia), periods of limitations run until the judgement comes into force, i.e. the period of limitations covers the proceedings in the appellate instance.

In Greece and Italy, this provision has repeatedly led to the dismissal of cases after the first instance judgement. In Greece, where many offences have an absolute limitation period of eight years, there is a great risk of proceedings ending due to acquittal when pending for judgment before the Appellate Court or even before the Supreme Court. Moreover, owing to a provision in the Penal Code, the Prosecutor has the authority to stop penal prosecution and dismiss pending cases if the limitation period is about to expire.

Germany, Portugal and Slovakia solve this problem by other means. In Germany, the judgement in the first instance suspends the period of limitations until it becomes final.[35] Portugal adopts a similar mechanism.[36] In Slovakia, any further step in the proceedings, such as the appeal after the first instance, interrupts SoL so that another full period commences. Given that there is no absolute SoL period in Slovakia and Germany, de facto, a proceeding never prescribes after the first instance.

3.1.3 ABSENCE OF IMMUNITY AS A GROUND FOR SUSPENSION OR INTERRUPTION

In many European countries, parliamentarians and government members are protected by immunity provisions against allegations that might be politically motivated. For the effective prosecution of corruption and corruption-related offences involving these persons, it is critical that immunity constitute a ground for suspension or interruption of the SoL period. However, this is not always the case.

COUNTRIES WHERE IMMUNITY DOES NOT PROVIDE A GROUND FOR SUSPENSION OR INTERRUPTION OF SOL

Bulgaria, Denmark, Estonia, Finland, Greece[37], Italy, Lithuania, Malta, the Netherlands, Romania, Spain

In Austria, there is a ground for suspension in the case of immunity, but it only applies to the immune deputy himself, and not to all other involved persons. According to a recent interpretation of a decree from the Ministry of Justice, this also applies if an immune deputy is one of many participants, for example a witness. In such a case, the proceeding may be delayed, but the SoL period is suspended only for the parliamentarian, not for all other participants. Given that deputies can never be pursued by law enforcement authorities for criminal offences related to their parliamentary work (professional immunity) and can only be pursued for non-professional criminal offences if a special committee of the parliament gives sanction to the prosecution measures (extra-professional immunity), this provision can easily lead to the dismissal of cases where deputies are involved because the limitation period for other parties runs out of time.

3.1.4 ABSENCE OF REQUESTS FOR MUTUAL LEGAL ASSISTANCE AS A GROUND FOR SUSPENSION OR INTERRUPTION

Mutual legal assistance (MLA) and extradition requests may take a long time to be granted – several months or even years – which may constitute a barrier to the effective prosecution of corruption offences before the expiry of the limitation per period. There are several European countries which do not establish MLA and extradition requests as grounds for suspension or interruption of SoL. Some of them, such as Austria, do not provide for MLA as a specific ground for suspension, but according to experts in these countries, this is largely compensated for by other provisions which can extend SoL.

COUNTRIES WHERE AN MLA REQUEST DOES NOT PROVIDE A GROUND FOR SUSPENSION OF SOL

Austria[38], Belgium, Bulgaria, Denmark, Estonia, Greece, Italy, the Netherlands, Portugal, Romania, Spain, Slovakia, Slovenia[39]

In some countries, there are additional problems in cases of international cooperation. Belgium and Denmark, for example, will not provide assistance if their own SoL period has expired, even though the underlying conduct is still actionable in the requesting state. Given that SoL are limited to five years in Denmark, this can seriously impair the prosecution of corruption-related offences in other countries where investigation may take more than five years.

3.2 EXAMPLES OF GOOD PRACTICE

Rather than the length of SoL in isolation, it is the interplay between their length, the grounds for suspension or interruption and the overall efficiency of the judiciary which defines whether a particular SoL regime can effectively prosecute corruption and corruption-related offences. Nevertheless, some good practice can be drawn from the research.

3.2.1 FLEXIBILITY REGARDING THE START OF STATUTES OF LIMITATIONS

In criminal law, the limitation period usually begins to run on the day on which the crime was committed. However, many European jurisdictions have implemented mechanisms that account for the late discovery of corruption cases.

3.2.2 VERY LONG OR ABSENCE OF ABSOLUTE STATUTES OF LIMITATIONS

In some jurisdictions, there are no absolute SoL periods in Criminal Law. Where this approach is combined with a comprehensive system of grounds for suspension and interruption and adequate relative SoL periods, there is a very low risk of cases being closed due to SoL.

In Austria, for example, there are no absolute limitation periods and the relative SoL periods are de facto only relevant between the day a crime was committed and the first investigative measures. While this minimises the risk that the prosecution of corruption be dismissed because of the passage of time, it also minimises the effectiveness of the system for the promotion of a fair trial within a reasonable length of time, as provided by article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

TABLE 7:
MECHANISMS THAT ACCOUNT FOR TIME DELAYS DUE TO LATE DISCOVERY OF CORRUPTION AND CORRUPTION-RELATED OFFENCES – SOME EXAMPLES FROM EU MEMBER STATES

Start of calculation	Countries (examples)
Continuous offence: calculating the period on which the last offence took place	Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Greece (for some crimes), Hungary, Portugal, Slovakia, Slovenia and Romania,
Permanent offence: calculating SoL from the date on which the illegal activity ceased	Austria, Bulgaria, Czech Republic, Estonia, Greece (for some crimes), Italy, Portugal, Romania, Slovakia, Slovenia
Attempted crimes, calculating SoL from the day of the last execution act	Austria, Bulgaria, Czech Republic, Hungary, Italy, Portugal
Calculating SoL from the day when consequences arise	Austria[40], Bulgaria[41], Czech Republic, Lithuania
Specific SoL for specific economic sectors or particular offences	Greece, Romania

3.2.3 PRIORITISING CASES CLOSE TO STATUTES OF LIMITATIONS EXPIRY

Almost no cases prescribe in Portugal, owing partly to the fact that cases which pose a high risk of dismissal are given a higher priority in internal distribution and investigation within the Prosecutor's Office and the Judicial Police, ensuring that the State's *jus puniendi*[42] is accomplished before the legal limitations terminate the criminal proceeding. Due to this provision, the number of criminal procedures dismissed due to SoL has reduced significantly: the average percentage of procedures dismissed dropped from 6.8 between 1990 and 2000 to 0.5 in the period from 2000 to 2007. However, at the same time the proceedings in Court have not been given such priority and the number of cases terminated in Court due to Sol has been rising over the last few years (2007 to 2009).

A similar provision exists in Greece, but has yet to yield significant results.

3.2.4 SUSPENSION OR INTERRUPTION OF STATUTES OF LIMITATIONS WHEN A DEFENDANT COMMITS ANOTHER CRIME

In Austria, SoL periods are suspended if an alleged offender commits another offence of the same nature during the SoL period of the original crime. In several other countries, SoL is interrupted in this case. This means that the accused must respect the law for the whole SoL period in order for the case to be able to prescribe. Consequently, it is seen as appropriate that the accused cannot be prosecuted after a reasonable period of law-abiding behaviour. In Austria, this ground for suspension contributes to fewer prescribed cases. It also means that the few cases which do prescribe are seen as acceptable because of the law-abiding behaviour of the offender for the whole period of limitation.

3.2.5 AVAILABILITY OF DATA AND STATISTICS

In some countries, such as Hungary, Ireland, Latvia and Portugal, detailed statistics are available. These are particularly valuable if they provide information not only about the number of proceedings that prescribe, but also about the reasons for the dismissal, as in the case of Portugal. In Ireland, statistics about why cases were not prosecuted can be easily accessed on the website of the Director of Public Prosecution. Availability of and easy access to data is of great help in identifying and addressing weaknesses.

4. ELEVEN COUNTRY PROFILES IN BRIEF

As previously mentioned, the national data collection was carried out at two levels. In 11 countries, the issue was studied in depth by their respective TI national chapters. In the other 16 EU member states,[43] an overview assessment was carried out.

This chapter briefly summarises the main characteristics of the SoL regime in each of the 11 countries studied in depth. The detailed reports and the overview of findings for all studies can be found at www.transparency.org

AUSTRIA

Overall, the Austrian SoL regime works well. The absence of absolute SoL periods in criminal proceedings is combined with a comprehensive system of grounds for suspension. In fact, the SoL periods are only relevant between the day a crime was committed and the formal accusation, or even earlier investigative measures causing suspension. If an offender commits another crime of the same nature during the limitation period, the earlier offence cannot prescribe before the SoL period of the offence committed later has expired. In civil proceedings, the injured party can claim for damages resulting from criminal offences within 30 years from the day the damage occurred, even if the damage and the wrongdoer are known from the beginning. This provision avoids SoL obstacles in corruption-related civil proceedings.

The main weaknesses in the Austrian SoL regime relate to the law enforcement agencies, which are not well-equipped for the investigation and prosecution of economic crimes. According to some experts, the lack of business expertise is accompanied by a general lack of human resources and by the poor training of prosecutors. The establishment of a Specialised Anti-Corruption Prosecution Office in 2008 aimed to address this problem. Recently, the Minister of Justice presented a draft law which foresees the upgrade of this agency to a national prosecution office. Under this draft law, the scope of this office would not only include corruption crimes, but also serious economic crimes. The office would also receive a five-fold increase in resources, which might improve the situation.

In addition, there are loopholes regarding the grounds for suspension in cases where parliamentary deputies with immunity from prosecution are involved in proceedings. According to the criminal code, deputies can never be pursued by law enforcement authorities for criminal offences related to their parliamentary work (professional immunity) and can only be pursued for non-professional criminal offences if a special parliamentary committee sanctions the prosecution measures (extra-professional immunity). This provision could also delay investigations and proceedings where a deputy with immunity is only one of many persons involved or, according to a recent Ministry of Justice interpretation, even only a witness. Given that the ground for suspension applies only to the deputy him- or herself, the SoL period for other participants continues running even if the proceeding is on hold in order to wait for sanction by the parliamentary committee. This is definitely a loophole in the Austrian system of the grounds for suspension, which are otherwise very comprehensive. Given that many parliamentarians also hold other public functions, for example, as mayors, this provision can pose obstacles to the prosecution of a significant number of cases.

BULGARIA

Overall, SoL in Bulgaria are postulated in a way which simultaneously aims to discipline the authorities entrusted with functions related to investigation and prosecution, and to provide an opportunity to determine the responsibility of the offender within a prolonged time period. A particularity of the Bulgarian penal code is that the SoL applies from the date when the offence took place until the execution of the respective judicial decision, while there are also provisional grounds for suspension or interruption. Unlike SoL for criminal prosecution, SoL concerning the other types of responsibility – administrative, disciplinary and civil – are comparatively short: up to five years starting from the date the offence took place.

In Bulgaria, statistics for the number of preliminary and judicial proceedings terminated due to SoL have been collected since 2005. It is indicative that in the period 2005-9 between 50 and 80 per cent of proceedings suspended during the preliminary phase were suspended due to SoL, while the percentage of judicial proceedings suspended due to SoL is less than one. The main conclusion from this is that the reason for the suspension of proceedings is the late start and the length of criminal proceedings. In this context, in order to discipline the authorities undertaking the preliminary proceedings to complete them on time, an initiative has existed since 2005 for the periodical renewal of suspended proceedings.

The main weakness in the implementation of the SoL is due, on one hand, to the differences in interpretation and implementation of the rules by officials in various fields of the judicial system, and on the other, the existing opportunities for delaying proceedings in such a way that the SoL expires before the final judicial statement. The most recent changes in the Bulgarian Penal Code, which significantly reduced the chances of the blocking of proceedings, especially on the part of the defendant, already show good results.

In sum, SoL is not among the key obstacles to determining the responsibility of offenders. What hinders the uncovering and investigation of corruption-related crimes is the mutual interest of the participants in the corrupt act and the opportunity for all participants to bear responsibility for their deeds, as well as the distrust of members of the investigating authorities and the lack of effective witness protection. Improvements would be made if guarantees for a lawful and efficient judiciary were established along with witness protection for those involved in corruption cases.

CZECH REPUBLIC

The limitation period for corruption-related criminal offences in criminal proceedings is not perceived as a critical issue in the Czech Republic. Extensive grounds for suspension and interruption are provided and there are no absolute SoL limiting the risk that cases prescribe. There is a lack of statistics available on SoL as a ground of termination of criminal proceedings. Yet the experts interviewed identified other reasons for the obstruction of criminal proceedings even before SoL expire, which can contribute to the impunity of corrupt conduct. A critical issue is the requirement to prove intent before proceedings can be started. The range of offences that are negligent (not intentional) should be widened and the police should be made able to document corruption-related criminal activity without first initiating criminal proceedings.

Another weakness of the Czech SoL regime was introduced only recently. The new criminal code removed the suspension of SoL in cases where the alleged offender is abroad. This provision should be restored. In compliance with international and European obligations, criminal liability for corporate entities should be introduced, in particular for bribery, proceeds from illegal activities, etc. In the Civil Code, the subjective limitation period for liability for damage should be extended.

Capacity issues are also a serious problem in the prosecution of corruption in the Czech Republic. There is a need to increase the detective capacity (e.g. specific operating techniques) of the bodies responsible for criminal proceedings. In addition, complex economic crimes or crimes against property are sometimes qualified erroneously as other, less serious offences, resulting in shorter SoL.

GREECE

In Greece, the main problem is the complicated regulatory framework which hampers the speedy administration of justice. The co-ordination of enforcement bodies, the training of personnel or even the establishment of a special prosecution authority for corruption-related offences could help to overcome this problem.

The main weakness of the SoL regime relates to the fact that SoL for members of parliament and cabinet members are shorter than SoL for other citizens, and that it is extremely difficult to lift immunity in Greece. This unequal treatment is a question of political will and should be addressed as a matter of urgency. Further, despite the lack of statistics, it must be assumed that cases prescribe due to the fact that appellate instances are included in the duration of SoL, which are, in some cases, also too short to ensure sufficient time for prosecution.

However, there are also some innovative provisions in Greece, such as the prioritisation of cases and the speedy trial of corruption-related cases, as well as the non-suspension of disciplinary proceedings while criminal ones are pending. However, the latter is not always implemented and it is quite common for disciplinary proceedings to be halted until the issuance of a final criminal court decision. Moreover, in order to answer the increasing need for statistical data in this respect, corruption cases have been recorded by the Prosecutor's Office since September 2009.

In order to decrease the backlog of cases and move towards facilitating the speedy administration of justice, a series of measures could be introduced, for example, creating specialised chambers within the existing courts, de-penalising minor infringements or dividing and transferring the jurisdiction of central courts (such as the Athens Court of First Instance) to regional courts.

In order to improve the detection of corruption cases, whistleblowers should enjoy a higher level of protection. These safeguards, as well as raising awareness among the public and educating young people, should form additional components of a strategy to combat impunity.

HUNGARY

In Hungary, SoL provisions are not the most relevant factors that lead to impunity. Even though the OECD WGB and GRECO found that the three-year limit for certain bribery offences (including foreign bribery) is too short, the research carried out in the framework of this project has not identified significant problems in this respect. Other factors, notably the lack of detection of corruption-related crime, are more significant. This lack of detection is determined, on the one hand, by structures of dependence and by personal interests, and on the other,as well as by the lack of a culture of integrity and confidence that authorities will effectively investigate and prosecute such crimes.

There are detailed statistics available on SoL and other grounds of termination of criminal procedures, enabling the Prosecutor General's office to carry out quality control over the work of the investigative authorities. The data shows that between 2005 and 2009 there have been numerous cases that were closed due to SoL during the investigation phase, totalling between 0.7- and to 11 per cent for corruption cases, and even up to 25 per cent in 2007 for other criminal cases. During the prosecution phase, between 0.5 and 2.2 per cent prescribed.

To improve the situation, there is a need for better co-operation between Hungary's controlling and investigative authorities in Hungary, as well as among investigative authorities at a transnational level. As corruption-related crimes are very often connected to economic crimes, stepping up efforts in investigation and prosecution of the latter ones may help fight corruption. As with other types of crimes, better personnel and technical resources could help the work of economic crime and anti-corruption units in the police and the prosecution services. The investigative independence of the police and the prosecutor's office should be strengthened in order to provide neutral, non-political and non-arbitrary decision-making about over the application of criminal law and policy to real cases.

IRELAND

Despite the fact that there are no limitation periods for criminal proceedings in Ireland, there is a low incidence of the prosecution of corruption-related offences. A critical issue for this is that there are very stringent standards of evidence required by the Irish courts. Further, the Director of Public Prosecutions (DPP) recently addressed the subject directly, citing the complexity of corruption and white-collar crime as a serious impediment to its successful prosecution. There are also practical problems when a prosecutor is faced by a jury of 12 randomly selected citizens.

The seemingly intractable problem of the state's inability to prosecute corruption offences has led over the past 20 years to the establishment of Tribunals of Inquiry simply, as their name suggests, to inquire into matters of corruption. The very founding principle of the tribunals of inquiry is that they are not concerned with the administration of justice. A consequence of this is that evidence given by a person compelled to appear at a tribunal cannot subsequently be used against that person in criminal proceedings. A further and natural consequence of this is public outrage at the spectacle of the corrupt behaviour of numerous individuals being shown publicly at the tribunals (and at huge public expense), with a negligible number of those persons facing any criminal sanction.

The Irish state should recognise the self-confessed inability of the DPP to prosecute complex corruption and white-collar crime successfully. The solution to this serious problem requires both an increase in the capacity of the investigative authorities and legislative change including the provision of whistleblower protection for those who report fraud, tax evasion and crimes under company law.

It will also, as the DPP recognised, require a change in the prevailing culture in a large section of society, including many of those in a position of authority, who at present do not appear to regard white-collar crime as equivalent to 'ordinary' crime.

ITALY

Lengthy proceedings and SoL are highly controversial issues in Italy. The analysis found that the current regime shows serious weaknesses. With one in 10 criminal proceedings being dismissed due to SoL (no data is available specifically for corruption-related cases), the current SoL regime constitutes a significant reason for impunity.

It is the combination of lengthy proceedings with short absolute SoL for offences such as the falsification of balance sheets, the abuse of functions and trading in influence, as well as the lack of political will to close loopholes, which hamper the prosecution of corruption cases. The fact that proceedings can prescribe after the first instance, even if an offender has already been found guilty, is particularly striking.

Problems arise due to the hidden nature of corruption: when the offence is discovered, a considerable period of time has often elapsed and the remaining time is often not sufficient to complete the proceeding. The calculation of the moment of commencement should therefore be changed, for example, by re-introducing the concept of a continuous crime. The grounds for interruptions should also be revisited, as well as the suppression of a differentiated discipline based on the subjective condition of habitual criminals.

Under these terms, it becomes particularly important to champion the early detection of crimes in order to allow prosecutors a longer available period of time to carry out proceedings. The introduction of whistleblowing regulations and the assignment of responsibility for foreign bribery cases to specialised and adequately resourced staff could address these problems.

LITHUANIA

Lithuania reformed its criminal SoL regime in June 2010. The reforms diminish the risk that SoL might hamper the enforcement of anti-corruption laws. However, it is too early to assess their impact in practice.

Analysis of the pre-reform situation showed that the SoL regime used to constitute an obstacle for the investigation and prosecution of criminal offences, mainly because the time delays were too short and there was a degree of inflexibility in the way they were calculated.

The new regime combines different mechanisms to calculate SoL. It extends the time periods to eight or 12 years, depending on the offence, decreasing the unreasonably high relevance of SoL for the enforcement of criminal law. SoL in administrative and civil proceedings are not particularly relevant in Lithuania.

While the mechanism of calculation of disciplinary SoL is quite flexible, the six-month absolute period of SoL is rather short. However, in its action programme, the government of Lithuania has committed to extending periods of disciplinary SoL. A related bill has already been proposed and is currently being debated in parliament. The authors of the amendment propose to extend the absolute period of disciplinary SoL to up to one year, and up to three years in the case of a serious breach of duties.

PORTUGAL

In Portugal, the SoL regime works well overall, with a decreasing number of cases being dismissed due to SoL. Since 2004, the number has fallen from 2.4 per cent to less than one per cent of all corruption-related cases. The main concern relates to lengthy criminal proceedings, which can cause SoL to expire during the court phase. Against this background, the Portuguese Parliament has recently enacted a law which extends regular SoL periods for most corruption-related crimes to 15 years. Nevertheless, the few cases which are dismissed tend to be large-scale and should therefore not be underestimated.

A remaining weakness of the Portuguese regime is that the SoL period includes all stages of the proceedings, including the appellate instances. Further, neither an MLA request nor delays caused by institutional co-operation (be it with public or private entities, such as banks) or appeals to the Constitutional Court constitute grounds for interruption or suspension.

To address the lengthy criminal proceedings which are a significant concern in the enforcement of anti-corruption legislation, it is recommended that the number of criminal investigators be increased, the number of proceedings each investigator deals with at once be reduced and a centralised, easily accessible system of information and co-operation between entities be provided. In addition, the detection of corruption cases should be improved, for example, by providing better protection for whistleblowers and by raising public awareness in order to ensure the earlier discovery of crime.

A specialised anti-corruption unit within the Prosecutor's Office and specialised criminal courts for corruption-related crimes should also be established.

ROMANIA

The Romanian anti-corruption law provides for specific penalties for corruption-related offences and, as a consequence, for special SoL for these offences. Moreover, specialised anti-corruption bodies have been put in place in order to reduce impunity for corruption offences.

The experts interviewed felt that the limitation periods regarding SoL, are adequate for corruption offences. Instead it is the criminal procedural system which raises issues in the fight against corruption, by creating opportunities to block and delay proceedings.
The Romanian criminal procedural system is deeply unstable and even though the limitation periods seem to be sufficient, the procedures stipulated by law create diverse possibilities for offenders to avoid prosecution. The solution therefore lies not necessarily in the augmentation of the limitation periods, but in the improvement of the procedural system.

Specifically, the Romanian SoL regime should extend and better define the grounds for interruption and suspension of SoL. There should be a consistent, unitary and stable criminal policy for corruption-related offences, with a thorough impact analysis of the changes, including consultation of relevant stakeholders. Data and statistics regarding the incidence of SoL should be gathered and analysed, and evaluation carried out of the 'black number' of corruption-related offences and the number of potential cases within the limitation period. The judiciary and law-enforcement bodies should be adequately equipped to investigate, prosecute and try corruption cases in order to close the procedural gaps, leading to the completion of the limitation period.

SLOVAKIA

In Slovakia, the SoL regime does not constitute a matter of significant concern for the prosecution of corruption-related offences. Problems relate rather to the inappropriate definition of criminal offences and to the lack of detection of corruption cases. Detailed statistics are available regarding the number of cases discontinued; however, they do not show the grounds for termination.

Weaknesses in the Slovakian SoL regime relate to the fact that the immunity of government members does not constitute a ground for suspension of SoL. In fact, the holding of a high position within the state administration practically precludes the investigation of criminal offences. Further, in order to suspend the period of limitation because an alleged offender is abroad, it needs to be proven that he or she intended to stay abroad. This provision, only introduced in 2006, should be revoked.

Another problem is the absence of a connection between the period of limitation for the compensation of damages pursuant to the Civil Code and the completion of criminal proceedings. The legal regulation allows for SoL with regard to the compensation for damages to expire prior to a valid completion of criminal proceedings and the conviction of the offender.

ANNEX

TABLE 8: NUMBER OF CLOSED INVESTIGATIONS AND COURT PROCEEDINGS DUE TO STATUTES OF LIMITATIONS

		Investigations closed due to SoL		Total number of closed and completed investigations		Percentage of investigations closed due to SoL (% 2 of 3)	
Country	Year	Corruption-related offences	Criminal	Corruption-related	Criminal	Corruption-related	Criminal
BELGIUM	2009	4	1.344	252	712.591	1,6	0,2
	2008	2	1.218	232	707.589	0,2	0,2
	2007	3	2.104	302	711.458	1,0	0,3
	2006	3	1.373	291	738.866	1,0	0,2
	2005	1	1.627	265	787.853	0,4	0,2
BULGARIA	2009		70.985	375	226.478	n/a	31,3
	2008		235.659	1.068	653.777	n/a	36,0
	2007		274.122	1.319	743.467	n/a	36,9
	2006		11.848	3 799	243.337	n/a	4,9
ESTONIA	2009	2		172	48.359	1,2	n/a
	2008	16		310	50.977	5,2	n/a
	2007	0		232	50.375	0,0	n/a
FINLAND	2009						
	2008						
	2007						
	2006						
	2005						
HUNGARY*	2009	2	2.097	276 + 961	199348 + 185005	0,7	1,05
	2008	10	108.332	285 + 490	375226 + 191279	3,5	28,87
	2007	6	91.893	254 + 311	366829 + 205721	2,4	25,05
	2006	5	36.556	258 + 423	207570 + 220943	1,9	17,61
	2005	46	5.763	414 + 857	99512 + 217536	11,1	5,79
ITALY**	2009						
	2008						
	2007						
	2006						
	2005						
LATVIA	2009	2		16		12,5	
	2008	3		16		18,8	
	2007	0		18		0,0	
	2006	2		41		4,9	
	2005	1		27		3,7	
LITHUANIA	2009	0	5.672	441	42.263	0,0	13,4
	2008	1	2.967	371	37.013	0,3	8,0
	2007	1	1.964	398	34.511	0,3	5,7
	2006	0	1.200	365	37.260	0,0	3,2
PORTUGAL***	2009				466692***		
	2008	1		125****	470.780	0,8	
	2007	1		128	446.428	0,8	
	2006	0		62	442.993	0,0	
	2005	4		278	431.171	1,4	
	2004	6		245	394.365	2,4	
SLOVAKIA	2009	12	193	945	32.266	1,3	0,6
	2008	21	219	869	30.070	2,4	0,7
	2007	9	123	899	29.926	1,0	0,4
	2006	13	137	922	27.523	1,4	0,5
	2005	15	220	2.365	38.513	0,6	0,6
SLOVENIA	2009			2.537	87.465		
	2008	23	346	2.601	81.917	0,9	0,4
	2007	42	430	2.735	88.197	1,5	0,5
	2006	25	381	2.686	90.354	0,9	0,4
	2005	25	637	2.118	84.379	1,2	0,8

	Criminal court proceedings closed due to SoL		Total number of closed criminal court proceedings and convictions		Percentage of proceedings closed due to SoL (% 4 of 5)	
Country	Corruption-related	Criminal	Corruption-related	Criminal	Corruption-related	Criminal
BELGIUM						
BULGARIA	13	80	1.584	69.289	0,8	0,1
	7	87	1.631	69.389	0,4	0,1
	16	82	1.859	65.601	0,9	0,1
	9	82	2.111	66.283	0,4	0,1
ESTONIA			25	7.881	n/a	n/a
				14.533	n/a	n/a
				12.706	n/a	n/a
FINLAND	0	301	78	731.648	0,0	0,0
	0	696	81	684.598	0,0	0,1
	2	737	111	628.592	1,8	0,1
	3	394	84	583.236	3,6	0,1
	1	245	100	601.367	1,0	0,0
HUNGARY*	3	444	200	87.743	1,5	0,5
	2	520	242	88.902	0,8	0,6
	3	633	348	93.800	0,9	0,7
	10	776	456	102.037	2,2	0,8
	8	1.034	502	104.262	1,6	1,0
ITALY**				806.918		
		153.388		1.509.455		10,2
		163.635		1.467.677		11,1
		159.533		1.406.082		11,3
		189.345		1.502.504		12,6
LATVIA	n/a		14			
	n/a		16			
	n/a		14			
	n/a		16			
	n/a		4			
LITHUANIA	2	28	353	16.832	0,6	0,2
	n/a	15	290	16.082	n/a	0,1
	n/a	10	318	16.066	n/a	0,1
	n/a	n/a	317	16.832	n/a	n/a
PORTUGAL***	5	1.489	198	120.846	2,5	1,2
	10	2.592	219	130.545	4,6	2,0
	3	667	187	126.035	1,6	0,5
	0	312	130	98.697	0,0	0,3
	0	306	118	95.404	0,0	0,3
	5	384	112	98.185	4,5	0,4
SLOVAKIA	20	589	510	30.953	3,9	1,9
	22	578	812	28.681	2,7	2,0
	18	572	749	27.067	2,4	2,1
	33	517	931	25.764	3,5	2,0
	34	494	1.645	27.729	2,1	1,8
SLOVENIA				15.885		
				14.277		
				14.484		
				15.288		
				14.222		

* *the first number in the cell is terminations without indictments, the second is the number of indictments*

** *2009: only first semester*

*** *number of total criminal proceedings closed in police entities*

**** *numbers referring to criminal proceedings for bribery, embezzlement and unlawful economic advantage which have been referenced by the Central Prosecution and Investigation Department*

ENDNOTES

1 See the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention, article 6 and the United Nations Convention against Corruption (UNCAC), article 29. Recommendations from the Council of Europe's Group of States against Corruption (GRECO) Third Evaluation Round have raised the issue as well.

2 The United Nations Convention against Corruption (UNCAC) Review Mechanism has only recently been established, and there are no outcomes so far.

3 See e.g. Corruption - A Glossary of International Standards in Criminal Law, OECD (2008) p. 55f. http://www.oecd.org/dataoecd/41/57/41650182.pdf) and Mid-term Study of Phase 2 Reports, OECD WGB 2006 http://www.oecd.org/dataoecd/19/39/36872226.pdf

4 Davigo, Piercamillo and Mannozzi, Grazia: La corruzione in Italia. Percezione sociale e controllo penale, Bari, Laterza, 2007. Mr Davigo is Councillor of the Supreme Court of Cassazione, and Ms Mannozzi is University Professor of Criminal Law at Università dell'Insubria in Como.

5 Namely Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Latvia, Luxembourg, Malta, the Netherlands, Poland, Slovenia, Spain, Sweden and the United Kingdom

6 EBSW palank□ sprendimą pri□musi teis□ja – nebaudžiama (The judge who has made a decision in favour of EBSW goes unpunished) // www.delfi.lt (July 12 2007), http://www.delfi.lt/archive/article.php?id=13767288

7 http://www.pbs.org/frontlineworld/stories/bribe/2009/07/global-corruption-roundup-ii.html; http://svt.se/2.58360/1.1597692/utskriftsvanligt_format?printerfriendly=true

8 Whistleblowers disclose information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action. In most European countries, whistleblowers are not sufficiently protected and their reports are not properly followed up. For more information see http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers

9 In Hungary, related statistics do exist. They show that the investigative authorities rejected a complaint or report on corruption offences due to SoL in four cases in 2006, three in 2007 and two in 2008.

10 DCIAP-PGR and CIES-ISCTE, A corrupção participada em Portugal 2004-2008 Resultados globais de uma pesquisa em curso, Final Report, 2009

11 In Cyprus, there are no SoL for any offence punishable with more than three months imprisonment; given that all corruption-related offences have higher charges, de facto there are no SoL for corruption offences.

12 Adapted from Bacio Terracino, Julio and Bikelis, Skirmantas: Background Note - Corruption-related Statutes of Limitations, 16 April 2010.

13 In Hungary, the period is equal to the maximum sentence, but may not be less than three years. See OECD Working Group on Bribery, Hungary: Phase 2 Report, May 2005, para. 115

14 OECD Working Group on Bribery, France: Phase 2 Report, January 2004

15 OECD Working Group on Bribery, Phase 2 Report, January 2004, para. 98.

16 Carignon ruling, Crim. 27 October 1997, Bull. Crim. No. 352.

17 Crim. 13 December 1972, Bull. No. 391, and Crim. 9 November 1995, 12 May 1998.

18 Data is missing for Ireland and the UK because they do not dispose of SoL in criminal proceedings and for Cyprus because de facto no SoL apply.

19 De jure the SoL period runs until the end of prosecution, but de facto the formal accusation and sometimes even other investigative measures before the accusation suspend the SoL period until the legally binding end of the proceedings.

20 Bikelis S., Nikartas S., Üsele L. Statutes of Limitations in the System of Criminal Justice. In Lithuanian Law Institute of Lithuania, 2009 (unpublished).

21 This table provides examples based on the 11 overview studies plus information from Belgium, Estonia, Latvia and Slovenia. In the course of this project it was not possible to compile a comprehensive list of all countries where any of these provisions apply.

22 This table provides examples, based on the 11 in-depth studies plus information from Belgium, Estonia, Latvia and Slovenia.

23 It is interesting to note that there are still some cases where SoL can be suspended in Slovenia, namely 1.immunity of Members of the National Assembly, 2. if the accused after committing criminal offence has become afflicted with a mental illness or mental disturbance or some other serious disease and 3., the termination of the investigation when the perpetrator is unreachable by the state authorities.

24 For details about Cyprus refer to endnote 11.

25 See Austria report page 14.

26 2008: GRECO Third Evaluation Round Evaluation Report on Latvia, on Transparency of Party Funding, para 83 and 2009: GRECO Third Evaluation Round Evaluation Report on Lithuania, on Transparency of Party Funding, para 117.

27 GRECO was established in 1999 by the Council of Europe (CoE) to monitor CoE member states' compliance with the organisation's anti-corruption standards through mutual evaluation and peer review. GRECO evaluation reports contain recommendations to the evaluated countries in order to improve their level of compliance with the provisions under consideration. Statutes of limitations are being assessed in the Third Evaluation Round.

28 While there are legal provisions on SoL they do not apply to corruption offences. This is the case, for example, of Regulation 2988 of 1974 on limitation periods in proceedings relating to transport and competition and Regulation 2988 of 1995 on the protection of the European Community's financial interests.

29 CoE Civil Law Convention, Art. 7(1).

30 Ibid.

31 Law 78/2000 on the prevention, uncovering and punishing of corruption offences. A problem lies in the fact that several corruption offences, such as conflict of interest, are not covered by this new law.

32 Italian report, page 10.

33 For this consent, the absolute majority is needed, following a request by at least 30 members of the Parliament. Such consent must be obtained no later than the end of the second regular session of the parliamentary term which commenced after the offence was committed.

34 Except for embezzlement, money laundering, passive bribery and corruption in judicial acts

35 § 78b (3) CC

36 The accusation suspends the SoL period, but only for a maximum period of three years. From the moment the accusation is notified, the SoL period is also interrupted, providing for an even longer SoL period. Unlike Germany and Slovakia, however, Portugal does have absolute SoL periods, which can expire due to slow proceedings in the first instance and in the appellate courts.

37 In Greece the prosecution of ministers is suspended for the duration of the parliamentary session within which the offence was committed. In addition, there is a very short extinctive deadline for prosecution that relates to the end of the parliamentary sessions.

38 However, researchers and experts felt that other provisions may somehow compensate for the absence of an MLA request as grounds for suspension or interruption

39 Given that relative SoL periods were recently abolished, there are (almost) no grounds for suspension any more. Instead, absolute SoL periods are particularly long.

40 If the results occur after the punishable behaviour ceased.

41 There are efficient and non-efficient (formal) crimes in the Bulgarian Penal Law. In the case of "efficient crimes, SoL is calculated from the day the consequences arise. There are no criminal consequences provided for the non-efficient crimes, so SoL begins from the moment of execution of the crime.

42 Jus puniendi is the State's right to sanction

43 Namely Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Latvia, Luxembourg, Malta, the Netherlands, Poland, Slovenia, Spain, Sweden and the United Kingdom

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