

# THE REASONABLE TIME LIMIT IN COMPETITION CASES IN EU

## GUIDE TO RELEVANT CASE LAW

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## Introduction

The duration of competition investigations remains one of the persistent challenges in the work of competition authorities, including the Competition Council of the Republic of Moldova. The problem is not merely one of administrative efficiency — it also arises frequently in litigation, where companies invoke the excessive duration of proceedings in support of their arguments.

The causes may vary. In many cases, they relate to the inherent complexity of investigations — particularly where detailed economic analysis or examination of a significant volume of evidence is required — as well as to the need to ensure procedural guarantees. Lastly, the duration of investigations is also influenced by institutional constraints, including the large number of cases pending simultaneously relative to available resources.

EU competition law provides a legal framework for assessing the duration of proceedings based on the principle of compliance with a 'reasonable time' requirement. The case law of the Court of Justice has progressively developed a relatively consistent set of criteria governing the application of this principle, including the consequences of exceeding a reasonable time limit.

In this guide, we analyse these criteria established in the case law and attempt to structure them into a coherent framework, so as to allow a clearer understanding of how the duration of investigations is assessed and of the limits within which it may be challenged in practice.

## I. The Reasonable Time Limit: General Principles

### 1. Absence of a Maximum Time Limit under EU Law and the Flexible Nature of the Standard

EU competition law contains no specific provisions governing the precise procedural time limits for finding infringements and imposing penalties by national competition authorities. The task of establishing and applying national procedural rules in this area falls to the Member States (*Imballaggi Piemontesi Srl, C-588/24*, para. 48; *Caronte & Tourist, C-511/23*, para. 43).

In the Republic of Moldova, Article 3(8) of the Competition Law No. 183/2012 provides that: *"the procedures for examining cases of competition legislation infringement shall be conducted by the Competition Council within a reasonable period of time."* Accordingly, the Competition Law, as a *lex specialis*, establishes the same general principle without setting fixed time limits.

The application of a reasonable time limit is consistent with EU law. EU law does not lay down a fixed time limit for investigations; their duration is assessed against a flexible standard,

applied in light of the circumstances of each case. The duration is subject exclusively to review on the basis of the 'reasonable time' principle, which is inherently flexible and context-specific.

The 'reasonable time' requirement does not constitute a pre-defined temporal threshold, but rather a flexible legal standard applied on a case-by-case basis. This approach reflects the particular features of competition investigations, where the duration of proceedings depends on their factual and economic complexity.

This idea is expressed explicitly in the case law. In *Limburgse Vinyl Maatschappij v Commission*, the Court held that:

*"...the reasonableness of a period cannot be assessed by reference to a precise maximum limit determined in an abstract manner but, rather, must be appraised in the light of the specific circumstances of each case."*

*(Limburgse Vinyl Maatschappij (LVM) v Commission, C-238/99 P, para. 192)*

The reasonableness of a period:

*"...is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities."*

*(Limburgse Vinyl Maatschappij v Commission, para. 187)*

## **2. The 'Reasonable Time' Requirement as a General Principle of EU Law and Its Relationship with the Right to a Fair Trial and the Rights of Defence**

The reasonable time limit constitutes a general principle of EU law and does not translate into a fixed time limit:

*"Compliance with the reasonable time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of Community law."*

*(Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG) v Commission, C-105/04 P, para. 35)*

This principle has not only an administrative dimension but derives from the broader requirements of the right to a fair trial. In the Court's case law, it is closely linked to the protection of fundamental rights, in particular the right of defence, enshrined in Article 47 of the [Charter of Fundamental Rights](#).

The link between the reasonable time limit and the right of defence is essential. The Court does not treat the reasonable time limit as a mere criterion of good administration, but as a procedural guarantee that ensures the effectiveness of the right of defence.

In this context, the Court indicated that:

*"It is essential to prevent those rights from being irremediably compromised on account of the excessive duration of the investigation phase and to ensure that the duration of that phase does not impede the establishment of evidence designed to refute the existence of conduct susceptible of rendering the undertakings concerned liable."*

([FEG v Commission, C-105/04 P](#), para. 50)

It is important to note that the risk of impairment of the right of defence does not arise only in the adversarial phase of the investigation, but may occur from the stage prior to the notification of the statement of objections, as confirmed by the Court of Justice:

*"the excessive duration of the stage prior to the statement of objections may have an effect on the future ability of the undertakings concerned to defend themselves, in particular by adversely affecting their rights of defence during the inter partes investigation stage of the infringement proceedings against them. The more time that elapses between a preliminary investigation measure and the notification of the statement of objections, the more unlikely it becomes that any exculpatory evidence relating to the infringements set out in the statement of objections can be obtained."*

([Caronte & Tourist](#), para. 64; [Nederlandse Federatieve Vereniging \(FEG\)](#), para. 49)

Accordingly, the assessment of whether the right of defence has been undermined "*must extend to the entire procedure and be carried out by reference to its total duration.*" ([Nederlandse Federatieve Vereniging \(FEG\)](#), para. 50).

It follows that the reasonable time limit is not a mere criterion of 'good administration', but a fundamental procedural guarantee designed to ensure the fairness of the procedure and the effectiveness of the right of defence.

### **3. Applicability of the Principle to Both Administrative and Judicial Proceedings**

The requirement to comply with a reasonable time applies to all competition proceedings, both in the administrative phase before the competition authority and in the judicial phase:

*"In competition matters, the principle that action must be taken within a reasonable period must be observed in administrative proceedings [...] which may lead to the penalties provided... In the event of an action brought against an administrative decision, it must also be observed in the judicial proceedings."*

*(LVM v Commission, C-238/99 P, para. 179)*

At the same time, the case law distinguishes, in administrative proceedings, two main stages:

- (1) the investigation phase preceding the statement of objections, and
- (2) the period between the notification of the statement of objections and the adoption of the decision.

In *FEG v Commission*, the Court held that analysis of the reasonable time limit must be carried out in both stages (paras. 37–39).

This comprehensive approach confirms that the obligation to comply with a reasonable time limit is not confined to a specific procedural stage, but concerns the coherence and overall duration of the entire investigation and enforcement process, from the first investigative measures to judicial review of the decision.

## **II. Criteria for Assessing the Reasonableness of the Duration of Proceedings**

### **4. Absence of a Strict Test or an Exhaustive List of Criteria**

The reasonable time limit standard is applied in each individual case, depending on **the specific circumstances of each case**.

*"the reasonableness of the period of time taken to adopt a measure is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case"*

*(Imballaqqi Piemontesi Srl, C-588/24, para. 64)*

The list of relevant criteria mentioned above is not exhaustive, and there is no pre-defined temporal benchmark. This reflects the impossibility of assessing the duration of competition proceedings by reference to abstract formulas.

That approach has been confirmed on numerous occasions by the Court of Justice:

*"that list of criteria is not exhaustive and the assessment of the reasonableness of the period in question does not require a systematic examination of the*

*circumstances of the case in the light of each of them where the duration of the proceedings appears justified in the light of one of them. The purpose of those criteria is to determine whether the time taken in the handling of a case is justified. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long."*

([Limburgse Vinyl Maatschappij, C-238/99 P](#), para. 188; [Der Grüne Punkt, C-385/07 P](#), para. 182; [Sumitomo Metal Industries, C-403/04 P and C-405/04 P](#), para. 117)

*"Conversely, the time taken may be regarded as longer than is reasonable in the light of just one criterion, in particular where its duration is the result of the conduct of the competent authorities. Where appropriate, the duration of a procedural stage may be regarded as reasonable from the outset if it appears to be consistent with the average time taken in handling a case of its type."*

([Thyssen Stahl AG v Commission, C-194/99 P](#), para. 156; [Limburgse Vinyl Maatschappij, C-238/99 P](#), para. 188)

This means that the court or authority is not required to apply each criterion mechanically, but rather to identify those elements which explain the duration of the proceedings in the specific context of the case. Where a single criterion — for example, the exceptional complexity of the case — provides a sufficient justification, the assessment need not go further.

This flexibility has, however, its limits: it cannot amount to a *carte blanche* for the authorities. The justification for duration must be real and concrete, based on the specific circumstances of the case, and not on the formal invocation of general factors such as complexity. Although the Court admits, in certain situations, reference to the average duration of similar cases, that factor is only indicative and cannot substitute for an individual assessment. In all cases, the authority must demonstrate that the actual duration of the proceedings is genuinely justified and that there are no periods of unjustified inactivity.

## 5. Complexity of Competition Cases as a Relevant Factor

The Court has specifically emphasised that competition investigations involve "*in principle, a complex factual and economic analysis*" ([Imballaggi Piemontesi](#), para. 52; [Caronte & Tourist](#), para. 48). This feature of competition proceedings justifies in itself a wider margin of discretion afforded to the authorities in the conduct of investigations.

Complexity may also arise in the course of an investigation, for example as a result of its extension to new undertakings or conduct, the discovery of new evidence, or the need to coordinate several parallel investigations. The Court has expressly accepted that such circumstances may justify postponing the deadline for closing the investigation, provided that the decision to postpone is adequately reasoned. ([Imballaggi Piemontesi](#), paras. 72–73)

## 6. Conduct of the Competition Authority and Periods of Inaction

The conduct of the competition authority — in particular the **existence of periods of unjustified inactivity** — may constitute a decisive factor in assessing compliance with the reasonable time requirement. Unlike the complexity of a case, which may justify a certain duration, inactivity attributable to the authority may lead to a finding that the reasonable time requirement has been breached.

In [Nederlandse Federatieve Vereniging \(FEG\)](#), the Court identified a considerable period of inactivity between the 'warning letter' sent in September 1991, immediately after receiving a complaint from the applicant, and the inspections in December 1994, finding that "*such a lapse of time was excessive and was the consequence of inaction attributable to the Commission*" (para. 40). The Court of First Instance also concluded that "*the period which in the normal course would be necessary for the adoption of the contested decision*", in circumstances where 23 months had elapsed between the hearing of the parties and the adoption of the decision (para. 41).

However, a mere finding of inactivity is **not, in itself, sufficient to annul the decision**. Such a consequence may follow only where the exceeding of the reasonable time limit has adversely affected the party's right of defence (see Section IV hereof).

Nor may the authority rely on its power to set priorities in order to justify periods of inactivity. The Court has clarified that a national competition authority "*is not allowed to persist in refraining from taking action*" in the preliminary stage ([Caronte & Tourist](#), para. 54, with reference to Case [Guérin automobiles, C-282/95 P](#), para. 36).

## 7. Conduct of the Undertaking under Investigation

The conduct of the undertaking under investigation also constitutes a relevant factor in assessing the reasonableness of the duration of the investigation ([Limburgse Vinyl](#), para. 187). Accordingly, strategies aimed at delaying or obstructing the investigation, as well as a lack of cooperation, may justify a longer duration of the proceedings.

## 8. The Importance of the Case for the Undertaking

"*The importance of the case for the person concerned*" may also be a relevant criterion for assessing the duration of the investigation ([Limburgse Vinyl](#), paras. 187, 210). Accordingly, the more serious the potential consequences of the investigation for the undertaking — including higher fines, reputational effects, and implications for market structure — the more stringent the requirement that the proceedings be conducted with expedition.

Once the undertaking has been informed of the objections raised against it (as set out in the statement of objections), it is placed in a prolonged state of legal and economic uncertainty, which justifies a more demanding standard of diligence on the part of the authority.

## 9. The Margin of Discretion of Competition Authorities in Managing Investigations

Competition authorities enjoy a **broad margin of appreciation** in managing investigations, including as regards their order and timing. This margin is expressly recognised in the Court's case law and is also confirmed in the [ECN+ Directive \(2019/1\)](#).

The Court held that:

*"in order effectively to fulfil their obligation to implement EU competition law, the national competition authorities must be able to give differing degrees of priority to the complaints brought before them, by having, for that purpose, a broad discretion."*

([Imballaqqi Piemontesi](#), para. 56; [Caronte & Tourist](#), para. 57)

*"The recognition that a broad discretion is also justified in the light of Directive 2019/1, Article 5(1) and (2) of which provides, in essence, that the national competition authorities must have the necessary resources to enable them to carry out investigations for the purposes of the application of Articles 101 and 102 TFEU, [...] and to adopt decisions aimed, in particular, at bringing an infringement of those provisions to an end and imposing penalties."*

([Caronte & Tourist](#), para. 58)

Accordingly, the resources allocated to competition authorities may constitute a relevant factor in assessing how that margin of discretion is exercised. The discretion enjoyed by the authority allows it to defer certain stages of the investigation, *"even when it has already established the existence of the essential elements of the alleged infringement."* ([Caronte & Tourist](#), para. 61)

*"Such a possibility is consistent with the objective of ensuring that the authority concerned is able to treat adequately all the infringement proceedings brought before it. It is also likely to contribute to an efficient use of the available resources..."*

([Caronte & Tourist](#), para. 61)

However, this margin is not unlimited. It must be exercised in compliance with the reasonable time requirement and the rights of the defence. The authority cannot, by invoking the

prioritisation of other cases, keep an investigation open indefinitely without taking concrete action. The Court has thus imposed a prohibition on *perpetuating a state of inaction*.

*"the national competition authorities must be able, where that is necessary in order to be able to impose effective and dissuasive penalties for the infringements of EU competition law, to postpone the time limit for closure of the investigation stage of that procedure.*

*However, such a postponement of that time limit should not, in principle, amount to a failure to observe the reasonable period within which that stage of the infringement procedure must be concluded."*

*(Imballaggi Piemontesi, paras. 62–63)*

*"Although the complexity of a competition procedure may justify extending its preliminary stage over a long period of time, **the Commission is not, however, allowed to persist in refraining from taking action during that phase of the procedure**"*

*(Caronte & Tourist, para. 54).*

In other words, the authority's power to prioritise cases may justify a certain allocation of its resources over time, but cannot justify prolonged periods of unjustified inactivity in specific investigations.

### **III. The Reasonable Time Limit and Other Temporal Mechanisms in Competition Law**

#### **10. The Reasonable Time Limit and Limitation Periods**

Competition law operates with two related but distinct concepts — the 'reasonable time' requirement and the limitation periods. While the 'reasonable time' limit constitutes a flexible standard assessed in light of the circumstances of each case, limitation period serves as an absolute threshold, establishing the maximum period beyond which the authority may no longer impose penalties, irrespective of any justifications raised.

EU law establishes two limitation periods for the imposition of penalties for infringements (see Article 25 of [Regulation No 1/2003](#)):

- **3 years** — for procedural infringements (concerning requests for information or the conduct of inspections), and
- **5 years** — for substantive infringements covered by Articles 101 and 102 TFEU.

Those periods may be interrupted, subject to the rule that the limitation period expires, at the latest, on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment (see Article 25(5) of Regulation 1/2003), or suspended under the conditions provided for in that same article.

The limitation period is suspended for the duration of pending judicial proceedings (Article 25(6) of Regulation 1/2003).

At national level, Member States may establish their own limitation periods, subject to the principles of effectiveness. The Republic of Moldova has established rules similar to those in Regulation 1/2003 (Articles 81 and 82 of [Competition Law No. 183/2012](#)).

The limitation period objectively limits the authority's power to impose penalties, whereas the 'reasonable time' requirement concerns the manner in which that power is exercised.

A competition authority may act within the limitation period and yet infringe the reasonable time requirement if the proceedings lasted longer than was justified in the light of the circumstances of the case. The Court expressly emphasised this distinction in [Imballaggi Piemontesi](#), treating the reasonable time requirement and the limitation period as complementary but autonomous mechanisms: the deferral of the deadline for closing the investigation phase remains possible, but "*subject to the maximum limit of the absolute limitation period*" (para. 78).

The interaction between the limitation period and the reasonable time requirement was further examined in [Ferriere Nord v Commission, C-31/23 P](#). In that case, the appellant argued that, as a result of the suspension of the limitation period during judicial proceedings, the procedure would have remained open more than 20 years after the termination of the infringing conduct — a period longer than 'twice' the ordinary limitation period (para. 128).

The Court held that this exceptional duration was explained by the suspension of the limitation period during successive judicial proceedings and that the EU legislature did not exceed the limits of its discretion (paras. 133–138). Thus, even a total duration exceeding twenty years may be consistent with EU law, provided that the applicable limitation periods — including periods of suspension — have not been exceeded.

It should, however, be noted that the case in question concerned an entirely exceptional situation, in which the unusually long duration resulted from the succession of three Commission decisions and several rounds of judicial proceedings, each giving rise to a suspension of the limitation period.

The review of the 'reasonableness' of the duration of an investigation conducted by a competition authority, even where it remains within the limitation period, constitutes a distinct inquiry and cannot be replaced by a mere finding that the limitation period has not been exceeded.

### 11. The Absolute Nature of Limitation Periods

The possibility of deferring the investigation deadline and, more generally, the discretion enjoyed by authorities in managing the timetable of proceedings is subject to an absolute limit: **the limitation period**. The Court has expressly stated that "*the possibility of postponing the time limit for closure of infringement proceedings [...] remains, in any event, subject to the maximum limit of the absolute limitation period*" ([Imballaggi Piemontesi](#), para. 78).

This means that, regardless of the complexity of the case and however justified successive deferrals of the investigation deadline may be, the authority cannot continue the proceedings beyond the applicable limitation period. The limitation period thus operates as an absolute and non-derogable ceiling on the duration of the proceedings that may lead to the imposition of a fine, independent of considerations of expediency or the effectiveness of the investigation.

### 12. Compatibility of National Procedural Time Limits with EU Law

As mentioned above, Member States have the right to establish specific national procedural time limits, including fixed deadlines for certain procedures. However, the establishment and application of such time limits must be consistent with EU law. In [Caronte & Tourist \(C-511/23\)](#), the Court ruled on an Italian period of 90 days for opening the investigation procedure.

The Court reiterated that Member States have the competence to establish not only general limitation periods but also procedural time limits for specific stages of the investigation (para. 51). However, such time limits must be established and applied in compliance with EU law, in particular the following requirements:

- National specific rules must not "*have the effect of compromising the effective application of Articles 101 and 102 TFEU*" (para. 46).
- "*In order to determine whether national rules on time limits observe such a balance, it is necessary to take into consideration, inter alia, the duration of the period concerned and all the detailed rules for its application*" (para. 47);
- "*Account must also be taken of the specific features of competition law cases and in particular of the fact that those cases require, in principle, a complex factual and economic analysis*" (para. 48).

Accordingly, a fixed national procedural time limit may be compatible with EU law if it is sufficiently long to allow an adequate investigation and if it is clear and foreseeable.

## IV. Consequences of a Breach of the Reasonable Time Limits

### 13. Breach of the Reasonable Time Limits: No Automatic Annulment — Unless the Rights of the Defence Are Affected

Unlike limitation periods — the expiry of which results in the loss of the power to impose penalties — a breach of the reasonable time requirement does not automatically affect the validity of the decision adopted. This rule is firmly established in the case law of the Court of Justice and reflects the need to strike a balance between the rights of the defence of undertakings and the effectiveness of the competition enforcement.

The Court held:

*" the breach of the principle of observance of a reasonable period is capable of justifying the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU only if it also constitutes an infringement of the rights of the defence of the undertaking concerned."*

*(Ferriere Nord, para. 150; Imballaggi Piemontesi, para. 76)*

The Court is thus making clear that not every breach of the reasonable time requirement automatically entails an infringement of the rights of the defence.

For the annulment of a decision to be justified, an additional essential condition must be satisfied: the excessive duration of the proceedings must have adversely affected the undertaking's ability to exercise its rights of defence:

*"the duration of the procedure may result in a contested decision being annulled if **two cumulative conditions are met**: first, the length of that procedure appears to have been unreasonable and, **second, the fact that a reasonable time was exceeded impeded the exercise of the rights of the defence.**"*

*(Ferriere Nord, para. 151)*

In [Baustahlgewebe GmbH v Commission, C-185/95 P](#), the Court held that:

*"in the absence of any indication that the length of the proceedings affected their outcome in any way, that plea cannot result in the contested judgment being set aside in its entirety."* (para. 49)

Although the *Baustahlgewebe* case concerned the excessive duration of judicial proceedings before the General Court, the principle underlying that conclusion — namely that excessive duration does not affect the validity of proceedings in the absence of a concrete impairment of the rights of the defence — is equally applicable to administrative investigations. The Court has expressly confirmed this rule in the context of proceedings conducted by the Commission: even where the duration of the administrative proceedings was excessive, that excess “cannot affect the validity of the administrative procedure”, save for the case where the rights of defence have been adversely affected. ([Nederlandse Federatieve Vereniging \(FEG\)](#), para. 42)

#### 14. Burden and Standard of Proof

The burden of demonstrating that the rights of defence have been affected lies with the undertaking, not with the competition authority. The Court has confirmed this rule in several cases:

*“...it is for that undertaking to demonstrate to the requisite legal standard that, because of the excessive length of the administrative procedure, it experienced difficulties in defending itself against the allegations of the competition authority.”*

*([Imballaqqi Piemontesi](#), para. 76)*

*“...it is for an undertaking which submits that the excessive length of the administrative procedure has had an impact on the exercise of its rights of defence to demonstrate to the requisite legal standard that, because of that excessive length, it experienced difficulties in defending itself against the Commission’s allegations.”*

*([ArcelorMittal Luxembourg v Commission](#), C-201/09 P and C-216/09 P, para. 118)*

It is essential that the duration of the investigation “does not impede the establishment of evidence designed to refute the existence of conduct susceptible of rendering the undertakings concerned liable.” ([Nederlandse Federatieve Vereniging \(FEG\)](#), para. 50)

#### 15. The Need to Demonstrate Actual Impairment of the Ability to Gather Evidence

A mere possibility that the duration of the proceedings may have affected the defence is not sufficient; actual and concrete impairment must be demonstrated.

It is not sufficient for the undertaking to encounter difficulties in gathering evidence as a result of the excessive duration of the proceedings. It must identify, in a concrete and precise manner, the specific items of evidence that have disappeared or can no longer be obtained (for example, documents that can no longer be restored or witnesses who are no longer

available), and explain how the absence of those pieces of evidence has actually affected the preparation of its defence.

In [Nederlandse Federatieve Vereniging](#), the Court rejected the applicant's arguments regarding impairment of the right of defence, finding them to be "*abstract and imprecise*" (para. 56).

The FEG association had claimed that certain persons involved were no longer available to provide information, but did not specify their identity, the date of their departure, the nature of the relevant information that could have been obtained from those persons, or the reasons why it was impossible to obtain their testimony (paras. 57–58). The Court therefore rejected the argument that the duration of the investigation had affected the undertaking's right of defence.

## 16. The Duty of Diligence of Undertakings in Preserving Evidence

The Court's case law also imposes, in certain circumstances, **an additional duty of diligence** on undertakings in managing and preserving their own evidence during investigation proceedings.

In [ArcelorMittal](#) (C-201/09 P and C-216/09 P), the Court confirmed the general burden on the undertaking to demonstrate that the excessive duration of the administrative proceedings has affected the exercise of the right of defence, and that because of the *excessive length, it experienced difficulties in defending itself.*" (para. 118)

In that case, the Commission adopted, in 1994, an initial decision concerning several undertakings involved in a series of anticompetitive agreements and concerted practices. That decision was challenged: the General Court dismissed the action in 1999, but in 2003 the Court of Justice annulled both the Commission's initial decision and the General Court's judgment, in so far as they concerned the undertaking ARBED, on the ground of a breach of the rights of the defence. The Commission subsequently decided to initiate new proceedings in respect of the conduct at issue and adopted a new decision concerning that undertaking in 2006, more than 12 years after the initial decision.

The undertaking then argued that certain evidence necessary for its defence was no longer available.

In those circumstances, the Court indicated that the undertaking "*was the addressee of the initial decision and was a party to the earlier proceedings before the General Court and the Court of Justice. As the Commission rightly submits, such circumstances must induce any diligent company to preserve the documents necessary for its defence.*" (para. 120)

*"It follows that an undertaking in ARBED's position must indicate in detail, if not the specific items of evidence that have disappeared, at least the incidents, events or circumstances which prevented it, during the period in question, from complying with its obligation of diligence and brought about the alleged disappearance of the evidence alluded to.*

*Only by examining such specific indications can the General Court and the Court of Justice assess whether the undertaking has shown to the requisite legal standard that it experienced the alleged difficulties in defending itself against the Commission's claims as a result of the excessive length of the administrative procedure, or whether those difficulties in fact derive from a failure to comply with its obligation of diligence."*

*(ArcelorMittal, C-201/09 P and C-216/09 P, paras. 121–122)*

In other words, an undertaking which is aware that the competition authority is conducting proceedings in which it is implicated must demonstrate that it acted with the requisite diligence to preserve the integrity of the evidence on which it may rely in its defence. That duty of diligence was all the more justified in the present case, since ARBED had actively participated in judicial proceedings for nearly a decade (1994–2003), while being aware that it was the subject of penalty proceedings and that those proceedings could be resumed.

## **17. Alternative Remedies: Reduction of Fines and Action for Damages**

Even where the conditions necessary for the annulment of a decision are not met, an undertaking may avail itself of other remedies in the event of a breach of the reasonable time requirement. The Court's case law recognises, in this regard, two principal remedies, which may be alternative or complementary:

- **Reduction of fines** — the court, even where it upholds the validity of the decision, may intervene in relation to the amount of the sanction.

In [Baustahlgewebe](#) (C-185/95 P), the Court found that the proceedings before the General Court had been of excessive duration — approximately 5 years and 6 months — and reduced the fine from ECU 3 million to ECU 2.95 million (a reduction of ECU 50,000), rather than annulling the judgment and referring the case back for reconsideration – a solution justified by considerations of procedural economy.

A reduction of the fine at the administrative stage is also possible, where the competition authority, on its own initiative, acknowledges that the duration of the proceedings was excessive and that part of the responsibility lies with it. In [Nederlandse Federatieve](#)

[Vereniging](#), the Court noted that the Commission had itself reduced the fine during the administrative proceedings, after finding that the duration of the investigation had been excessive.

The Court also dismissed the applicants' request for a further reduction of the fine. Nevertheless, the Court of Justice confirmed that the reduction granted by the Commission was based on the excessive duration of the investigation. In those circumstances, the Court stated that *"the applicants have produced no evidence to show why the Court, in the exercise of its unlimited jurisdiction, should consider granting a further reduction of the amount of the fine. Consequently, there is no reason to grant the applicants' request in that regard."* (para. 219)

- **Action for damages** — this constitutes an alternative remedy, applicable where the excessive duration of the proceedings causes quantifiable harm, without justifying the annulment of the decision.

In [Ferriere Nord](#), the Court expressly stated that, in cases of a breach of the reasonable time requirement, but in the absence of any infringement of the rights of the defence, undertakings may bring an action for damages *before the Courts of the Union* (para. 137).

The right to damages derives from Article 340(2) TFEU, which provides that: "In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties." (This principle, as applied to situations involving a breach of the reasonable time requirement, has been confirmed, inter alia, in [Groupe Gascoigne SA v Commission, C-58/12 P](#), para. 82.)

## V. Conclusions

The case law of the Court of Justice examined above, concerning compliance with the reasonable time requirement in the investigation and adjudication of competition cases, reflects a balance between two fundamental values of EU competition law: on the one hand, the effective enforcement of competition rules and the need to ensure their deterrent effect; and, on the other, the guarantee of a fair process and the rights of the defence of undertakings.

This balance is reflected in several basic rules:

- **The reasonable time requirement is a general principle, not a fixed deadline**, thereby allowing it to be adapted to the varying complexity of competition cases.

- **A breach of the reasonable time requirement does not automatically lead to the annulment of the decision**, but requires proof that the rights of the defence have been adversely affected, so as to avoid creating a mechanism for evading liability.
- **Competition authorities enjoy a broad, but not unlimited, margin of discretion in managing investigations**; the exercise of that discretion is subject to judicial review and cannot, in any event, result in the expiry of the applicable limitation periods.
- **Where breach of the reasonable time limits does not lead to the annulment of the decision**, affected undertakings may, under certain conditions, seek a reduction of the fine and/or reparation for the harm caused by the excessive duration of administrative or judicial proceedings.