

ANALYSIS



Competition and EU law

Partial limitation defences that may be raised in relation to the limitation period within a cartel

(Supreme Court Judgment no. 681/2026 of 6 May)

A flawed judgment on a problem that has remained unresolved to date in the truck cartel. Defences available in cases of liability in solidum.

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1. Scania in the truck cartel

Supreme Court Judgment no. 681/2026 is one of several rendered on the same date upholding the civil liability claim against Scania for its involvement in the truck cartel. We are interested in only one aspect of this decision, a highly significant one, which is what makes this Supreme Court ruling unique. Although it may not appear so, the truly decisive aspect of this judgment is not the issue of the limitation period for the action against Scania, but the fact that this company had been found liable at first instance not only for the sale of its own cartelised trucks, but also for the sale of vehicles manufactured by Volvo, Iveco and Renault — sales not carried out by Scania, but by the respective manufacturer or its subsidiary — which were also participants in the cartel sanctioned by the European Commission.

A brief summary of the facts follows. The European Commission's decision under

for the facts in exchange for a direct 10% reduction on the final amount of the fine imposed. The manufacturer Scania denied its involvement in the cartel and refused to accept the settlement decision. The European Commission continued its investigation and found that Scania had actively participated in the collusive practices from 1997 to 2011. The European Commission's decision imposing a fine on Scania is dated 27 September 2017.

Of Scania's appeal to the Supreme Court, we are only concerned with the following ground of appeal and its resolution:

Fifth ground. Interruption of the limitation period:

The heading of the ground of appeal alleges a "infringement of Articles 1974 and 1148 of the Civil Code. By ordering the defendants to pay compensation for 1 Iveco truck, 2 Volvo trucks and 1 Renault truck, the judgment infringes the case law of the Supreme Court, which provides that Article 1974 of the Civil Code is not applicable in the context of liability in solidum". In the body of the ground of appeal, the appellants argue that the infringement occurred because the court failed to recognise the limitation period for the claim for

damages in respect of the Volvo, Iveco and Renault trucks. As the appellants were not notified of any interruption of the limitation period in relation to the companies of the Volvo, Iveco and Renault Group within the limitation period, and as no company from that group was sued in these proceedings,

In 2016, Scania denied its involvement in the cartel and refused to accept the settlement decision

the settlement procedure of 19 July 2016 (the settlement decision), which declared the existence of — and imposed fines for — the 'truck cartel', is a legal instrument governed by EU competition law for resolving infringement proceedings. In 2016, a large number of the infringing manufacturers expressly admitted their liability

the judgment infringes Article 1974 of the Civil Code and, consequently, Article 1148 of the Civil Code, since the defendants raised that limitation defence from the outset in their statement of defence.

The Court's decision:

The ground of appeal must be rejected for the reasons set out below. As explained in the rulings on the previous grounds of appeal, in the joined proceedings brought against the defendants, the claimants have sought to hold them liable for their participation in collusive conduct, in breach of European Union competition law, for having caused an artificial increase in the prices of medium and heavy trucks in the European Economic Area. This assertion applies both to the actions seeking compensation for losses suffered in the purchase of Scania trucks and to the actions seeking compensation for damages suffered in the purchase of trucks from Renault/Volvo and Iveco manufacturers. We have also argued that such an action was brought within the time limit, as at the time the claim was filed, less than five years had elapsed since the publication of the Scania Decision on 30 June 2020.

The doctrine of the absence of interruptive effects in cases of liability in solidum, as stated in the Decision adopted at the Plenary Session of this First Chamber of the Supreme Court on 14 March 2003, does not apply in this case because the action was not time-barred when the claim was filed. No interruption of the limitation period for the actions brought in the claim against

Scania was necessary because those actions were brought before the expiry of the limitation period, which therefore did not need to be interrupted. Nor was any interruption of the limitation period necessary in respect of Volvo, Renault or Iveco, because no action has been brought against those manufacturers or their subsidiaries.

2. Criticism

The judgment fails to deal with all the issues (*minus petita*) and is poorly reasoned:

1. Scania argues that the doctrine of 'liability in solidum' has been constructed by the First Chamber of the Supreme Court for the purpose of excluding the application of Article 1974 of the Civil Code. According to this doctrine, if joint and several liability is not *ex lege* or *ex voluntate*, but must be declared by the judgment resolving the claim for damages against one or more of the co-debtors, the remaining potential co-debtors who were not parties to the proceedings cannot be subject to the interruption of the limitation period. According to the Chamber, the doctrine of the absence of interruptive effects in cases of liability in solidum does not apply in this case *because the action was not time-barred when the claim was filed*.
2. It is clear that Scania was not seeking to argue that the action being heard was time-barred, but rather that the (potential, undisputed) interruption of the limitation period against Volvo/IVECO/Renault could not be relied on against Scania on the basis of the doctrine of liability in solidum. That is

to say, even if the action against Volvo/IVECO/Renault were still alive due to an interruption, that interruption could not be invoked against Scania, and the claims relating to the trucks from those manufacturers were time-barred.

3. This penultimate sentence of the judgment is obscure in meaning and could

The judgment fails to deal with the core issue

be read as absurd: “No interruption of the limitation period for the actions brought in the claim against Scania was necessary because those actions were brought before the expiry of the limitation period, which therefore did not need to be interrupted”. Put like that, it seems to imply that actions not time-barred cannot be interrupted. But surely that cannot be the meaning of the sentence. The sentence does not resolve the issue that Scania appeared to raise. That issue did not concern whether or not it was necessary to interrupt the limitation period for the action against Scania. In the body of the ground of appeal, according to the very words quoted above with which the Supreme Court summarises it, the infringement would have occurred *by failing to recognise the time-barring of the claim for damages in respect of the Volvo, Iveco and Renault trucks*. In other words, the core issue of the ground of appeal was, as we shall see in detail below, that the contested judgment failed to apply Article 1148 of the Civil

Code, which allowed Scania to raise the personal defence applicable to Volvo, Iveco and Renault in respect of the part of the liability for which they were responsible.

4. But all this can be set aside, because in substance it is *obiter dictum* in the case. The substance of the problem is as follows. The actions *against these non-Scania trucks* were already time-barred when the action was brought against Scania. And that is precisely why liability is sought from Scania, because with regard to this manufacturer the limitation period (which began later) was still running. The limitation period against the other three manufacturers had not been interrupted; the action against them was simply time-barred.
5. That said, there is no alternative but to refer to Article 1148 of the Civil Code, and Scania does so, without the Supreme Court even deigning to mention the matter. The limitation period is a ‘personal defence’ available to Volvo, Iveco and Renault, and which Scania was able to invoke in these proceedings ‘in respect of the part of the debt’ for which they were liable, pursuant to Article 1148 of the Civil Code. That *part* means the part of the debt for which they were liable; something which, in my opinion, the court of first instance should have specified when applying, as it ought to have done, the aforementioned Article 1148. However, for the present purposes, that ‘part’ of Article 1148 is this ‘part’ of Article 73(5) of the Competition Act (which does not

refer to defences, but to contribution), “the part in proportion to its relative liability for the harm caused”. However, the *harm* in this cartel is the overcharge on the trucks, which renders the contract (each contract) partially void; therefore, the harm caused by Volvo is the overcharge on the Volvo trucks, and so on for the other two manufacturers.

6. Article 1148 of the Civil Code should have been applied against the claimant. *The part of the debt* attributable to Volvo, Iveco and Renault was already time-barred when the claim was filed against Scania. This is not a matter of

recourse, but of not upholding in part the claim against Scania.

It remains only to consider the scenario in which the Volvo/IVECO/Renault debts have not yet become time-barred when the claim is filed against Scania. The claim against Scania does not interrupt the limitation period for Volvo’s debt (as Article 1974 of the Civil Code does not apply, given that this is a case of liability in solidum). And, in all likelihood, Scania would have to resort to mechanisms capable of interrupting it (for example, through an intervention under Article 14 of the Civil Procedure Act, which, however, is not working in practice).