



Press Office of the Constitutional Court

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INSIDER TRADING: ONLY PROFITS ARE TO BE CONFISCATED

The administrative sanction of confiscating the entire “proceeds” of illicit financial operations and the “assets used” to commit them – and not only the “profit” gained from these operations – is unconstitutional.

This was established by the Constitutional Court in Judgment no. 112, filed today (Judge Rapporteur: Francesco Viganò), in which the Court found that these specific types of confiscation, together with the extremely high fines provided for in the Consolidated Text on Finance – constitute punishment that contrasts with the principle of the necessary proportionality of sanctions, which the Court deemed applicable to “punitive” administrative offences.

In the case before the Court, a company director had purchased 30,000 company shares for a total of approximately 123,000 euros, as he possessed confidential information on the imminent launch of a public voluntary tender offer. When the offer was launched, the total value of the purchased shares rose to about 150,000 euros, thus leading to capital gains of approximately 27,000 euros.

Having established his responsibility for the administrative offence of insider trading, CONSOB issued him with a fine of 200,000 euros and confiscated his assets for a value of approximately 150,000 euros, equal to the entire value of the shares purchased, which constituted the “product” of the offence.

The judgment clarifies that the “product” of the offences established by the Consolidated Text on Finance effectively consists in the entire value of the financial instruments purchased or in the proceeds from their sale, while “profit” is the economic benefit gained through the operation. The “assets used” to commit the offences in question are the sums invested in the purchase or the financial instruments disposed of.

The Court held that while confiscation of the “profit” is merely restorative in nature, and as such constitutes the legal system’s natural and legitimate reaction to the individual’s illicit enrichment, confiscation of the “product” and of the “assets used” to commit the offence are, instead, “punitive” in nature. Together with the already harsh fines imposed by the Consolidated Text, they lead to disproportionate punishment.

In the Court’s view, the disproportion arises clearly in the case at hand, in which – against profits from the illicit operation amounting to approximately 27,000 euros – an *in rem* sanction was imposed for a value of approximately 350,000 euros. Its “punitive” component was thus about thirteen times greater than the actual economic benefit gained from the operation.

The Court thus held unconstitutional the provision on confiscation of the “product” and “assets used” to commit the offences established by the Consolidated Text on Finance. The other monetary sanctions and the confiscation of the “profit” made from the offence remain available.

Rome, 10 May 2019