



Press Office of the Constitutional Court

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*Press release of 10 May 2019*

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## DOES THE RIGHT TO SILENCE APPLY TO PROCEEDINGS BEFORE CONSOB? THE CONSTITUTIONAL COURT SENDS A REFERENCE TO THE CJEU FOR A PRELIMINARY RULING

The Court of Justice of the European Union (CJEU) has been called upon to clarify whether the “right to silence” enjoyed by those who may be charged with an offence can also be invoked in proceedings before the *Commissione Nazionale per le Società e la Borsa* (National Commission for Companies and the Stock Exchange; CONSOB) regarding offences falling within its sphere of competence.

Indeed, in Order no. 117, filed today (Judge Rapporteur: Francesco Viganò), the Constitutional Court made a reference to the CJEU seeking a preliminary ruling on whether, in EU law, individuals suspected to have engaged in market abuse may avoid questioning by CONSOB as part of its role as supervisor of financial markets.

The question before the Constitutional Court, which the CJEU will also have to address, arises in a case involving a company director who had to pay a substantial fine for failing to answer CONSOB’s questions on suspicious financial operations. The party challenged the fine, stating that he had simply relied upon the constitutional right to refrain from answering questions from which his own liability might have emerged.

The Supreme Court of Cassation, seised of the case, had raised a question of constitutionality regarding the provision of the Consolidated Text on Finance that imposes a fine in the range of 50,000 euros to 1 million euros for “failing to meet CONSOB’s requests on time”, without allowing for any exceptions for individuals who are already suspected of an offence.

The Constitutional Court found that EU law requires Member States to punish the failure to cooperate with financial market supervisory authorities. Thus, before

deciding the question of constitutionality, it considered it appropriate to seek a preliminary ruling from the CJEU on whether this duty also applies towards those who are suspected of committing an offence, and whether it is compatible with the “right to silence”, that is, with the right not to be forced to make self-incriminating statements, a right recognized by the Italian Constitution and by the Charter of Fundamental Rights of the European Union.

Rome, 10 May 2019

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