Long Read

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I. Introduction

On 2 February 2021, the Court of Justice of the European Union ('Court' or 'ECJ') issued a landmark judgment on the protection of fundamental rights in Europe and the relationship between the EU and Member States legal orders.[1]

This ruling is a good example of the desirable judicial dialogue between national courts and the ECJ, through the preliminary ruling procedure instituted by Article 267 of the Treaty on the Functioning of the European Union ('TFEU'). In fact, this was the second reference ever made by the Italian Constitutional Court ('CC'), less than three years after the first one had been made in *M.A.S. and M.B.* (also known as '*Taricco II*').[2] In that reference, both the CC and the ECJ showed their willingness to engage in the dialogue and accommodate the apparently conflicting interests at stake. *Taricco II* is the aftermath of another reference, submitted in 2015 by the *Tribunale di Cuneo* (a first instance court), where such dialogue was not so well-succeeded (Case C-105/14 – *Taricco*, also known as '*Taricco I*').[3]

Taricco I and *II* have been extensively debated in the literature and my purpose is not to engage in that discussion. It is also worth acknowledging that in *Consob* the ECJ did not specifically mention those judgments. Nevertheless, while going through *Consob*, I could not avoid thinking about its relationship with the *Taricco* 'saga' and how it might have shaped the outcome of this case or, more broadly, the dynamics of the dialogue between the CC and the ECJ. Therefore, I will turn to *Taricco I* and *II* to compare the questions for preliminary ruling posed back then with the reference made by the CC in *Consob*. I will then assess their impact on the answers given by the

[1] Case C-481/19, *Consob*, EU:C:2021:84.

[2] Case C-42/17, *M.A.S. and M.B*, EU:C:2017:936.

[3] Case C-105/14, *Taricco and Others*, EU:C:2015:555.

ECJ and finally underline the decisive role of the national judge within the EU judicial system.

Consob also makes it clear that EU law must necessarily be interpreted and applied taking into account the protection of fundamental rights, which is also part of EU law. The protection of fundamental rights is precisely the common denominator in the three legal orders that interact in the European space (and in *Consob*): the EU, the Member States and the system of the European Convention on Human Rights ('Convention'). Although tensions are inevitable, it is submitted that it is precisely the respect for fundamental rights that allows a 'pacific' coexistence.

II. Case C-481/19 – *Consob*

1. The scope of the right to silence

In the course the national proceedings at hand, concerning an administrative offence of insider trading, the competent authority (Consob) imposed on the accused ('DB') a fine of EUR 50 000 for his refusal to answer questions at a hearing to which he had been summoned.

Market abuse is regulated at EU level through Directive 2003/6 (repealed by Regulation 596/2014). Pursuant to Article 14(3) and Article 30(1)(b) of Regulation 596/2014, Member States shall determine administrative sanctions for failure to cooperate with an investigation, including questioning to obtain information.[4] Thus, the national rules underlying the fine imposed sought to implement those EU law provisions.

The case reached the CC, which considered that the constitutionality assessment of the national rules concerned would require interpreting and possibility assessing the validity of EU law.[5] Resorting to the preliminary ruling procedure, it asked the ECJ whether Articles 14(3) of Directive 2003/6 and 30(1)(b) of Regulation 596/2014 could be interpreted as permitting Member States not to penalise individuals who refuse to answer questions which might establish their liability for an offence that is punishable by administrative sanctions of a 'punitive' nature.[6] Only in the event of the first question being answered in the negative, the CC further asked whether the said EU law provisions were compatible with Articles 47 and 48 of the Charter, also bearing in mind the Convention, the case-law of the European Court of Human Rights ('ECtHR') and the constitutional traditions common to the Member States.

From the outset, the ECJ noted that, as prescribed by Articles 6(3) TEU and 52(3) of the Charter, to ascertain the scope of the right to remain silent, it would have to take account of Article 6 of the Convention, as interpreted by the ECtHR.[7] In that regard, it recalled that, although that provision does not specifically refer to the right to remain silent in criminal proceedings, such right is indisputably recognised by the case-law of the ECtHR as fundamental for the right to a fair trial.[8]

[4] See paras 51 and 53 of the judgment.

[5] See para 23 of the judgment.

[6] See para 27 of the judgment.

[7] See paras 36 and 37 of the judgment.

[8] See para 38 of the judgment.

Furthermore, the ECJ underlined that such right is not limited to statements that directly incriminate the person concerned but also covers information about facts which may 'subsequently be used in support of the prosecution and may thus have a bearing on the conviction or the penalty imposed…'.[9]

The protection afforded by the right to remain silent thus appeared to cover a situation such as the one at stake in the main proceedings. Notwithstanding, the ECJ recalled that the application of that principle to administrative proceedings depends on the so-called '*Engel / Bonda* criteria', which determine whether they are to be considered 'criminal in nature'.[10] While it is for the national court to ascertain whether those requirements are met, the Court acknowledged that some of the administrative sanctions imposed by Consob appear to pursue a punitive purpose and to present a high degree of severity.[11]

In that context, the ECJ importantly added that the right to silence could still be applicable, even though the proceedings brought against DB did not fulfill the conditions to be 'criminal in nature'.[12] It would particularly be the case if DB's statements could be used in future criminal proceedings brought against him. The Court's wording suggested that other circumstances might deserve a similar outcome, thus extending the application of the right to silence to administrative proceedings which are not 'criminal in nature'. Allegedly, such declaration might also pave the way for the extension of other Charter rights to administrative proceedings, such as the *ne bis in idem* principle (Article 50 thereof). If such issue is raised in national proceedings, it might reach the ECJ through the preliminary ruling procedure and invite the latter to specify other circumstances under which Charter rights might apply in the context of administrative proceedings *per se*.

In any event, by particularly highlighting cases where statements of the accused are used in future criminal proceedings, the Court might have precisely increased the level of protection afforded by Article 50 of the Charter. I recall here the recent case-law of the ECJ on the so-called 'double-track' enforcement regimes, where it has accepted that, subject to certain conditions[13] (analysed in light of Article 52(1) of the Charter), Member States can simultaneously impose administrative and criminal penalties to fight against illegal conduct such as tax evasion or market abuse, without infringing the *ne bis in idem* principle.[14]

This line of case-law has been subject to criticism, namely by lowering the protection offered by the *ne bis in idem* principle.[15] In *Consob*, by accepting that the person concerned

[9] See para 40 of the judgment.

[10] See para 42 of the judgment.

[11] See para 43 of the judgment.

[12] See para 44 of the judgment.

[13] Case C-524/15, *Menci*, para 63.

[14] Cases C-537/16, *Garlsson Real Estate and Others*, EU:C:2018:193; C-524/15, *Menci*, EU:C:2018:197; and C-596/16 and C-597/16, *Di Puma and Zecca*, EU:C:2018:192. Concerning market abuse, see Case C-596/16 and C-597/16, *Di Puma and Zecca*, paras 26 and 42.

[15] Dissenting opinion of Judge Pinto de Albuquerque in ECtHR, *A and B v. Norway*, Appl. Nos. 24130/11 and 29758/11, judgment of 15 Nov. 2016; see also Opinion of Advocate General Campos Sánchez-

may rely on the right to remain silent in the course of administrative proceedings, even if they do not fulfil the conditions to be considered criminal in nature, the Court took a decisive step to protect the fundamental rights of the accused of administrative offences. In fact, the statements of the accused in the course of administrative proceedings might not be used against him in the context of criminal proceedings. This is all the more important since, after the adoption of Regulation 596/2014 and Directive 2014/57, double-track systems are not only *in principle* accepted by the ECJ but also imposed by the EU legislature itself.[16]

2. Compatibility of the relevant provisions of the Directives with the Charter

Considering the scope of the right to remain silent, as well as the punitive purpose and the severity of the sanctions imposed by Consob, the ECJ concluded that Charter Articles 47 and 48 preclude the imposition of a fine such as the one at stake in the main proceedings. It then went on to assess whether the relevant provisions of EU secondary law could be interpreted consistently with the right to remain silent.[17]

In undertaking such assessment, the ECJ duly recalled that EU secondary law shall be interpreted, as far as possible, in conformity with the Charter. In its view, the wording of the relevant provisions of both directives, albeit not expressly ruling out the Member States' obligation to impose penalties also when the accused refuses to grant information that could imply his liability, does not preclude an interpretation pursuant to which such obligation does not apply in those circumstances.

This interpretation seems nothing but logical since, by its very nature, in no way could EU secondary law be interpreted as waiving an obligation deriving from EU primary law. It thus follows that there is no need for the former to specifically rule out a possibility which would run counter a Charter right. This is all the more so since, as also underlined by the ECJ, the recitals of both directives emphasise their respect for fundamental rights and observance of the principles recognised in the Charter.

Thus, the Court concluded that the contested provisions could be interpreted in conformity with the requirements of Articles 47 and 48 of the Charter and, accordingly, their validity was not called into question.[18]

III. Relationship with *Taricco I* and *II*

In *Taricco I* (2015), the ECJ was essentially asked whether, in order to protect the financial interests of the EU (adequate collection of VAT and fight against tax evasion), a national court may

Bordona in case C-524/15, *Menci*, EU:C:2017:667, paras 55–56 and 69–73. In the literature, see Mirandola and Lasagni, 'The European ne bis in idem at the Crossroads of Administrative and Criminal Law', 2 *Eucrim* (2019), 126-135.

[16] See in this regard Regulation 596/2014, Article 30(1). See also Luchtman, 'The ECJ's recent case law on ne bis in idem: Implications for law enforcement in a shared legal order', 55 *CML Rev*. (2018), 1717-1750, at 1737, 1739 and 1740.

[17] See para 49 of the judgment.

[18] See para 56 of the judgment.

disapply national criminal law provisions on limitation periods to prevent various offences related to VAT from becoming time-barred.[19]

Considering the content of the question posed, one might argue that the national court was reluctant to side with the *de facto* impunity resulting from the national provisions and asked the ECJ whether EU law could 'legitimise' its refusal to apply them. Moreover, it did not seek to clarify whether the eventual disapplication of the limitation period would conflict with the principles of legality and non-retroactivity of criminal law.[20] The ECJ 'accepted the challenge' and declared that the national rules at stake, by preventing the imposition of effective and dissuasive penalties in a significant number of cases of serious fraud affecting EU financial interests, could have an adverse effect on the fulfilment of Member States' obligations under Article 325(1) and (2) TFEU. Therefore, it ruled that 'the national court must give full effect to Article 325(1) and (2) TFEU, if need be by disapplying the provisions of national law the effect of which would be to prevent the Member State concerned from fulfilling its obligations under Article 325(1) and (2) TFEU'.[21]

Unsurprisingly, the 'elephant in the room' question of how to harmonise such ruling with the principles of legality and non-retroactivity of criminal law - protected by the Italian Constitution, part of the constitutional traditions common to the Member States and guaranteed by Charter Article 49,[22] eventually arose. The question was posed to the CC, which stayed the proceedings and resorted to the preliminary ruling procedure. Through its questions,[23] the CC essentially (and figuratively) asked the ECJ: 'are you really telling me that lower courts shall refrain from applying national legislation on limitation periods of criminal offences in order to comply with EU law? Does it hold true even where such solution would run counter to the Italian Constitution?'.

Once again, the ECJ 'accepted the challenge' and understood that a 'subtle adjustment'[24] of *Taricco I* was necessary. In so doing, it confirmed that EU law requires national courts to disapply national provisions which have as their effect the prevention of application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting EU financial interests, '*unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter*

[19] See case C-105/14, *Taricco and Others*, para 34. The referring court asked other questions concerning the compatibility of the national rules on limitation periods with Articles 101 TFEU, 107 TFEU and 119 TFEU. Notwithstanding, the ECJ considered that the national rules at stake could not be assessed in light of those Treaty provisions.

[20] Case C-42/17, *M.A.S. and M.B.*, paras 25-28.

[21] Case C-105/14, *Taricco and Others*, para 58.

[22] Case C-42/17, *M.A.S. and M.B.*, paras 51-52.

[23] Case C-42/17, *M.A.S. and M.B.*, para 20.

[24] J. L. Vilaça, 'The Judgment of The German Federal Constitutional Court and The Court of Justice of the European Union – Judicial Cooperation or Dialogue of the Deaf?', p. 6.

than those in force at the time the infringement was committed'.[25] (emphasis added).

In *Consob*, as described in greater detail above, the CC essentially asked whether the relevant EU directives could be interpreted as allowing national authorities not to penalise those who refuses to answer questions in proceedings aimed at establishing their liability.

The preceding analysis aimed at showing that the manner in which the questions for a preliminary ruling are put by the national court and/or the way in which the Court perceives them can influence the case's outcome. In fact, while the national court in *Taricco I* showed a very deferential attitude towards the EU's financial interests, the CC in *Taricco II* recalled that those interests must not affect the respect for fundamental rights, protected by the Italian Constitution. In *Consob*, faced with the potential conflict between national rules implementing EU secondary law and fundamental rights enshrined in the Charter, the Convention and the Italian Constitution, the CC asked the ECJ if the contested provisions could be interpreted in a manner consistent with fundamental rights. The ECJ answered in the affirmative and the potential conflict was avoided.

IV. General comments

1. The role of the ECJ, the protection of fundamental rights and the principle of consistent interpretation

Over the years, the EU and its judicature have been occasionally criticised for their excessive focus on the so-called Union 'economic interests', at the expense of fundamental rights protection. In the 60's and 70's, in well-known rulings, both the German[26] and the Italian[27] Constitutional Courts warned that they would keep the prerogative of assessing whether EU law respected the catalogue of fundamental rights protected by their constitutions. They would nonetheless refrain from doing so 'as long as' the EU continued to ensure an adequate level of fundamental rights protection.

More recently, judgments like *Melloni*[28] or *Taricco I* revived the discussion of whether an adequate level of fundamental rights protection is ensured in the EU, especially when compared to domestic constitutions. Opinion 2/13,[29] where the ECJ affirmed the need to preserve the autonomy and integrity of EU law, as well as its exclusive competence to interpret and assess the validity of EU law, has also been criticised.

Without seeking to underestimate those moments of tension that have underpinned the evolution of

[25] Case C-42/17, *M.A.S. and M.B.*, para 62.

[26] Decision of 18 October 1967, judgment of 29 May 1974, BverfG 37, para 271 ('*Solange I*') and judgment of 22.10.1986, BverfG 73, para 339 ('*Solange II*').

[27] Judgment n. 183, *Frontini*, 27 December 1973, judgment n. 170, *Granital*, 8 June 1984 and judgment of n. 232, 21 April 1989.

[28] Case C-399/11, *Melloni*, EU:C:2013:107.

[29] Opinion 2/13, *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, EU:C:2014:2454.

the ECJ's case-law on fundamental rights, it is also fair to highlight numerous judgments, namely regarding the four freedoms or asylum law, where the Court has pushed for an increase in the protection of fundamental rights.[30] In certain crucial moments it has taken the necessary steps to ensure the adequate level of protection of fundamental rights, in line with the Convention and the case-law of the ECtHR, within the scope of application of EU law.[31]

Similarly, *Consob* makes clear that the respect of fundamental rights is part of the EU's legal order. And this is exactly why the principle of consistent interpretation was the right tool to frame the issue (by the CC) and to answer the questions (by the ECJ). In principle, it must be possible to interpret EU secondary law consistently with the Charter. If that is the case, the former's validity is not questioned. Only in the unlikely scenario that a consistent interpretation is not possible shall the validity of those EU secondary law provisions be questioned.

In essence, respect for fundamental rights must be a pre-condition for the adoption of EU legislation, as much as assuring that the Union has competence or that the adequate procedure for adoption was observed. Indeed, Union economic interests cannot be above the respect for fundamental rights. In *Taricco II*, the financial interest at stake derived from EU primary law (Article 325 TFEU) and yet the ECJ duly emphasised the need to respect the principle of legality of criminal law, which is a general principle of EU law.[32] In the case at hand, as recalled by the Council and the Advocate-General, the fact that the contested provisions are drafted in general and unconditional terms does not mean that exceptions made with a view to respecting a fundamental right cannot be introduced by way of interpretation.

Compelling national courts to protect Union financial interests, even if it entailed breaching fundamental rights, would not only be at odds with national constitutions but also with EU law. However, if national courts bear this in mind and resort to the preliminary ruling procedure, many conflicts can be avoided.

2. The preliminary ruling procedure and the importance of the role played by the national courts in the judicial dialogue

More broadly, *Consob* can also be seen as contributing to the peaceful coexistence of three legal orders: those of the EU, of the Member States and of the Convention.

Starting by the latter, the Court took this opportunity to recall that fundamental rights recognised by the Convention constitute general principles of EU law and that the rights contained in the Charter which correspond to rights

[30] Cases C-29/69, *Stauder v Stadt Ulm*, EU:C:1969:57, para 7; C-11/70, *Internationale Handelsgesellschaft*, EU:C:1970:114, para 4; C-4/73, *Nold KG v Commission*, EU:C:1974:51, para 13; C-36/75, *Rutili v Ministre de l'intérieur*, ECLI:EU:C:1975:137, para 32; and, more recently, C-36/02, *Omega*, EU:C:2004:614, paras 33-35; and C-208/09, *Sayn-Wittgenstein*, EU:C:2010:806, para 52, 89 and 93.

[31] See, among others, cases C-411/10*, N. S. and Others*, EU:C:2011:865 and C-578/16, *C. K. and Others*, EU:C:2017:127.

[32] Case C-42/17, *M.A.S. and M.B.*, para 52.

guaranteed by the Convention shall have the same meaning and scope as those laid down by the Convention.[33] Consequently, when interpreting Charter Articles 47 and 48, Article 6 of the Convention, as interpreted by the ECtHR, shall function as the minimum threshold of protection'.[34] The Court thus defined the scope of the right to silence essentially relying on the case-law of the ECtHR.[35]

This approach contrasts with other judgments, where the Court, despite recalling the wording of Articles 6(3) TEU and 53(2) of the Charter, nonetheless declared that it would undertake its analysis 'in the light of the fundamental rights guaranteed by the Charter'.[36] In fact, in *Menci* and *Garlsson*, the Court granted increased importance to the fact that the Convention does not constitute, for as long as the EU has not acceded to it, a legal instrument which has been formally incorporated into EU law. Therefore, and in order to preserve the autonomy both of Union law and of the ECJ, the examination of the question referred should be undertaken in the light of the fundamental rights guaranteed by the Charter.[37]

However, it is submitted that in *Menci*, *Garlsson* and *Di Puma*, the ECJ actually introduced a higher standard of protection of Charter Article 50, when compared to the preceding ECtHR's judgment in *A and B v. Norway*.[38] In fact, in the latter case, the ECtHR considered that the combination of proceedings, provided that they are sufficiently connected in substance and time, does not amount to a limitation of the *ne bis in idem* principle, in so far as there is no 'bis'. In contrast, the ECJ has considered that double-track systems constitute a limitation of Article 50, thus subject to the proportionality test provided for in Article 52(1). Such a deviation from the ECtHR's case-law and the consequent application of the proportionality test will allow the ECJ to keep under close scrutiny double-track systems applied in the national legal systems, assuring that penalties against market abuse remain effective, proportionate and dissuasive.[39]

Turning to the relationship between EU and national law, several remarks are due. From the outset, the role of the CC and its efforts to take part of the judicial dialogue with the ECJ cannot be underestimated. The way in which it posed the questions and exposed the circumstances and the legal background of the case paved the way for the ECJ to assess the issue.

In this regard, it is worth recalling that, according to well-established case-law, the referring court is entirely responsible for determining the facts of the case in the main proceedings, which are relevant for the purposes of its reference for preliminary ruling. Although the ECJ may pose questions to the national court, it is ultimately for the latter to provide the ECJ with the relevant

[33] See para 36 of the judgment.

[34] See para 37 of the judgment.

[35] See paras 38-40 of the judgment.

[36] Case C-537/16, *Garlsson Real Estate and Others*, EU:C:2018:193, paras 24-26.

[37] Case C-537/16, *Garlsson Real Estate and Others*, para 26; and Case C-524/15, *Menci*, paras 22-24. See also Opinion of Advocate General Cruz Villalón in case C-617/10, *Åkerberg Fransson*, EU:C:2012:340, para 87. See also Luchtman, op. cit. supra note 16, at 1729-1732.

[38] ECtHR, *A and B v. Norway*, Appl. Nos. 24130/11 and 29758/11, judgment of 15 Nov. 2016.

[39] Luchtman, op. cit. supra note 16, at 1748.

facts and legal context of the questions it is asking, allowing the former to give a useful answer.[40] Moreover, as recalled by Advocate-General Pikamäe, the Court has to be very careful in reformulating the questions posed, 'to avoid encroaching on the jurisdiction of the referring court'.[41] In a nutshell, the outcome of a preliminary ruling is highly dependent on the cooperation of national courts.[42]

In the present case, as discussed in the previous section, the CC basically asked the ECJ whether EU law, more specifically the relevant provisions of the directives at stake, allows a national court not to penalise natural persons who, in the context of an investigation carried out in order to protect Union interests, refuse to provide that authority with answers that are capable of establishing their liability. Only if this question would be answered in the negative, the CC asked whether the said provisions were compatible with Charter Articles 47 and 48 of the Article 6 of the Convention and the constitutional traditions common to the Member States. In doing so, the CC duly undertook his role, not only of a guardian of the Italian Constitution, but also as guardian of EU law's autonomy, integrity and uniform interpretation within the limits of its jurisdiction. In my opinion, this is precisely how the judicial dialogue through the preliminary ruling procedure shall function. Each party being duly aware of its competences, respecting the sphere of competences of the other (assigned by the Treaties) and actively working together towards the common goal of building a coherent system of constitutional pluralism[43] or a 'Constitutional culture community'.[44]

In this regard and as a final remark, it might be useful to briefly consider the PSPP judgment of the German Constitutional Court ('GCC') of May 2020, where it declared the *Weiss*[45] judgment of the ECJ (and the European Central Bank's Public Securities Purchase Programme) to be *ultra vires*. In doing so, the GCC chose the path of 'judicial confrontation', renouncing to any further dialogue. Indeed, as results from consistent case-law, a ruling of the ECJ within the preliminary ruling procedure is binding upon the referring court[46] and any other national court[47] across Europe. In case of doubt or disagreement with the ECJ's ruling, the referring court has always the option (or even the duty) to refer a new question for preliminary ruling, based on new arguments

[40] Case 42/17, para 24. See also Case C-349/17, *Eesti Pagar*, EU:C:2019:172, para 50.

[41] Opinion of Advocate General Priit Pikamäe in case C-481/19, *Consob*, para 43.

[42] This can be seen in Case C-637/17, *Cogeco Communications*, EU:C:2019:263 and *Taricco II*, para 28.

[43] Wind and Weiler (Eds.), *European Constitutionalism Beyond the State* (Cambridge, Cambridge University Press, 2003); Maduro, 'Three Claims of Constitutional Pluralism', in Avbelj. And Komárek, (Eds.), *Constitutional Pluralism in the European Union and Beyond* (Hart, 2012).

[44] To use the expression of Advocate General Pedro Cruz Villalón, in case C-62/14, *Gauweiler*, EU:C:2015:400, para 61, quoting Andreas Vosskuhle, until very recently (6 May) President of the BVerfG.

[45] Case C-493/17, *Weiss and Others*, EU:C:2018:1000.

[46] Cases C-52/76, *Benedetti/Munari*, EU:C:1977:16, para 26; and C-446/98, *Fazenda Pública*, EU:C:2000:691, para 49.

[47] Cases C-212/04, *Adeneler and Others*, EU:C:2006:443, para 122; and C-231/06, *Jonkman*, EU:C:2007:373, paras 38-39.

or considerations.[48] In its PSPP judgment, the GCC ignored that duty, as well the ECJ's exclusive competence to interpret and assess the validity of EU law.

In the aftermath of this judgment, some commentators feared its potential systemic effect.[49] Arguably, it could encourage other constitutional courts to boycott the 'keystone of the EU judicial system',[50] either by refusing to refer a question for preliminary ruling or to abide by the ECJ judgments, relying on their 'national identity' (Article 4(2) TEU). In *Consob*, the CC refused to engage in such destructive behaviour, which could have meant declaring the unconstitutionality of the contested national provisions and implicitly considering that the relevant provisions of EU secondary law were incompatible with the right to silence. Instead, it rightly put the question to the ECJ, therefore respecting the latter's exclusive competence established by the Treaties. Fortunately, *Consob* tends to show that the EU's judicial architecture is solid enough to stand several localised *judicial earthquakes* such as the one that took place in May 2020 following the Weiss judgment.

V. Final words

One of the tasks of the ECJ is to ensure that EU law is enacted, interpreted and implemented respecting the fundamental rights enshrined in the Charter. This may create constraints to EU and national authorities and, in certain circumstances, limit the full effectiveness of EU secondary law.

National courts also play a decisive role in their respective jurisdictions, scrutinising the implementation of EU law by national authorities. Nevertheless, to preserve the autonomy, integrity and uniformity of EU law, questions of its interpretation and validity must remain under the ECJ's exclusive jurisdiction.

Conflicts between different legal interests happen in any jurisdiction. Naturally, in a multileveled one, they tend to occur more frequently. *Consob* gives some insight on how to overcome them. National courts shall respect the boundaries of their jurisdiction, resort to the preliminary ruling procedure as mandated by Article 267 TFEU and abandon the dichotomy EU interests/fundamental rights, to the extent that the latter are part of the former. The ECJ, as the EU's "constitutional court", must ensure strict observance of the Charter.

Mariana Martins Pereira is LL.M. in Law and former trainee at the Court of Justice and at the European Court of Human Rights. She is currently a lawyer working on EU and ECHR Law matters in a specialised law firm in Lisbon, Portugal.

[48] J. L. da Cruz Vilaça, op. cit. note 24, p. 16.

[49] J. L. da Cruz Vilaça, op. cit. note 24, mentioned a risk of 'constitutional disaggregation' (p. 1).

[50] Case C-824/18, *A.B. and Others*, EU:C:2021:153, para 90.

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