

NonIncrimInA Conference

Nemo tenetur and the expansion of a doctrine: from criminal to administrative proceedings and beyond

Thursday, 7 November 2024 + Friday, 8 November 2024

KU Leuven Campus Brussels (Odisee)

The **NonIncrimInA Conference** offers a platform for an in-depth discussion on routes, aspects and perspectives of the *nemo tenetur* principle in criminal proceedings and different types of administrative proceedings as well as in OLAF investigations.

The two-day conference includes a workshop and will provide an opportunity for academics and stakeholders to engage in a dialogue on the essential features of the *nemo tenetur* principle, on the degree of its protection outside of the realm of *stricto sensu* criminal proceedings, and on proposed guidelines to ensure a common standard of protection of this principle across domains and jurisdictions.

The Conference represents the concluding event of the NonIncrimInA project, an Action Grant funded by the Union Anti-Fraud Programme (EUAF).



Thursday, 7th November 2024*Nemo tenetur* and its legal and conceptual framework**08.30–09.00 Coffee and breakfast****09.00–09.30 Welcome and conference opening***Michele Panzavolta and Anna Mosna***09.30–13.25 Session I****09.30–10.00****Keynote: Francesco Viganò, Italian Constitutional Court***New Challenges for the *nemo tenetur* principle***10.00–11.35 Panel I – Fundamental coordinates of the *nemo tenetur* principle****Chair: Elise Muir, KU Leuven****Sveva Franco, European Commission***The right to silence between ECHR and EU law (working title)***Lambros Papadias, European Commission**

TBC

Frank Meyer, University of Heidelberg**Nemo tenetur* for legal entities: a comparison between Europe and the US (working title)***Wojciech Jasiński, University of Wrocław***How public interest shapes the very essence of the right not to incriminate oneself—a critique of the European Court of Human Rights approach***11.35–11.50 Coffee break****11.50-13.25 Panel II – National perspectives on *nemo tenetur* between criminal and administrative law****Chair: Michele Panzavolta, KU Leuven****Klaas Francken, KU Leuven****Nemo tenetur* in tax and customs law***Fenella Billing and Sten Bønsing,****Nemo tenetur* in Danish investigations: The grey zone between criminal law and administrative law***Giacomo Cotti, University of Bologna**

The challenging implementation of the *nemo tenetur* principle in “criminal” administrative proceedings: perspectives from Italy

Giorgio Ardizzone, LUISS Guido Carli

Nemo tenetur and the obligation to cooperate in Italian administrative investigations (working title)

13.25–14.45 Lunch break

14.45–17.50 Session II

14.45–16.20 Panel III – National perspectives on *nemo tenetur* in administrative proceedings

Chair: Anna Mosna, University of Leiden and KU Leuven

Veerle Colaert, KU Leuven – Thomas Incalza, KU Leuven and UHasselt – Andrea Gooris, KU Leuven

Nemo tenetur and financial law (working title)

Wouter Devroe, KU Leuven

Nemo tenetur: how to reconcile *DB v. Consob* and competition law?

Carsten Momsen, Free University of Berlin

Nemo tenetur and corporate crime (working title)

Rani van de Gaer, KU Leuven

Nemo tenetur in Belgian environmental law (working title)

16.20–16.35 Coffee break

16.35–17.50 Panel IV – *Nemo tenetur* and immigration law

Chair: Wouter Devroe tbc, KU Leuven

Elsbeth Guild, Queen Mary University of London & College of Europe

Nemo tenetur and migration (working title)

Sara Bianca Taverriti, University of Insubria

Nemo tenetur and the expansion of a doctrine: from criminal to administrative proceedings and beyond

Didem Dođar and Rory Sugrue, University of Tilburg

Evaluating the broadening application of *nemo tenetur* for refugee exclusion and its consequences in criminal cases

20.00 Dinner (speakers and invited guests only)



Friday, 8th November 2024
Nemo tenetur in practice

WORKSHOP

08.30–09.00 Coffee and Breakfast

09.00–12.25 Session III

09.00–10.15 Panel V – *Nemo tenetur* in digital contexts

Chair: Frank Meyer, University of Heidelberg

Slawomir Steinborn, University of Gdansk

Nemo tenetur and digital investigations: a comparison between Europe and the US (working title)

Veronica Tondi, LUISS Guido Carli

An Italian perspective on *nemo tenetur* and password revelation (working title)

Murtaza Mohiqi, University of Agder, Norway – Mohammad Anvar Moheghy. Education Activist; Human Rights Defender

The role of technology and digital evidence in upholding *nemo tenetur*: legal challenges and innovative solutions in the digital age

10.15–10.30 Coffee break

10.30–12.05 Panel VI – *Nemo tenetur* in practice

Chair: Slawomir Steinborn, University of Gdansk

Fabio Giuffrida, European Commission

The cooperation between OLAF and EPPO between support and complementary investigations (working title)

Representative from EPPO (invitation pending)

The right to silence in practice: an EPPO perspective (working title)

Miguel Janssoone, OLAF

The right to silence between OLAF internal and external investigations (working title)

Andris Eglons, Deputy Director, Legal Department of the Competition Council, Latvia

The right to silence in AFCOS activities (working title)



12.05–13.25 Session IV – Guidelines and discussion with stakeholders

Anna Mosna

NonIncrimInA Guidelines

- **Amira Szönyi, OLAF**
- **Riccardo Sciaudone, Lawyer, Rome**
- **Viktors Lavreckis, Combating Economic Crimes Division (State Police), Latvia**
- **Stijn Lamberigts, Lawyer, Brussels (invitation pending)**
- **Thomas Arts, KU Leuven and European Commission (TBC)**

13.25–14.00 Conference conclusion and light lunch



The NonIncrimInA Project

As the border between administrative and criminal is fading, European courts have increasingly extended criminal law's fair trial guarantees to administrative proceedings which present certain punitive traits. In this process, the adaptation of the privilege against self-incrimination has proven particularly challenging. While it is uncontested that no one can be forced (directly or indirectly) to admit their guilt, the extent of the privilege beyond self-accusatory statements is a contentious matter. The compliance of mandatory duties of cooperation and the extent of the right to silence are of special relevance in administrative proceedings. Also, the possibility to punish (and the definition of punishment) of non-cooperative behaviors of the defendant are a matter of heated debate.

The CJEU's case law in D.B v. Consob and in F.N. and others v. Übernahmekommission has innovated the traditional cautious approach by expanding both the scope and the content of the nemo tenetur privilege. This might have a profound impact on the legitimacy of European administrative investigations and proceedings.

This project intends to contribute to the clarification of the scope of the nemo tenetur in OLAF investigations considering the most recent CJEU case law, as OLAF represents the modern hybrid crime-repression strategy sitting between administrative and criminal law. Considering OLAF's multifaceted duties and the different purposes of its reports (civil, administrative, criminal) it is fundamental to unpack the structure of the privilege and understand its applicability and form in each case. Based on this research, this project wants to develop guidelines on the application of nemo tenetur and to offer interactive practice-oriented training to OLAF officials and AFCOS. These trainings shall contribute to a more effective application of the nemo tenetur principle, especially in view of the synergy between OLAF and EPPO.

