

AG: Italian Rules Restricting Negotiated Settlements in Line with EU Law

News

Thomas Wahl

Procedural rules of national law that limit the accused person's possibility to request a negotiated penalty to the beginning of the trial are in conformity with EU law, according to the [opinion](#) of Advocate General (AG) *Bobek* in [Case C-646/17 \(criminal proceedings against Gianluca Moro\)](#). Neither the provisions of Directive 2012/13/EU on the right to information in criminal proceedings nor Art. 48(2) of the Charter alter this finding.

In the case at issue that was referred by the Tribunale di Brindisi, Italy, the defendant (Mr. Moro) had been charged with the criminal offence of handling proceeds of crime. After the start of the trial, he was informed that the acts of which he was accused must be reclassified and that the charge could be modified to the criminal charge of theft. The defendant then applied for a negotiated penalty, known as "*patteggiamento*." Under Italian law, however, such an application is only admissible before the trial proceedings have been opened if a mere legal reclassification of the acts occurs. At a later stage, the application is possible if the change is only of factual nature which was not the case here. The referring court was unsure whether this legal situation is in line with the provisions of Directive 2012/13 and Art. 48(2) of the Charter.

The AG first examined the general applicability of Directive 2012/13, especially since the Italian government put forth that the Directive is only applicable if there is a cross-border element in the main proceedings. The AG rejected this objection by arguing that the Directive is also applicable to cases that have a purely national dimension. Beside the wording, it is in particular the Directive's objective of the Directive that does not limit it to cross-border situations: the Directive pursues the harmonization of the Member States' criminal law systems in order to create a common playing field in which certain minimum standards are guaranteed.

Second, the AG agrees with the position of several Member States and the Commission that the legal question at issue, i.e., the consequences of the legal (re)classification of the accusation, is not governed by the provisions of Directive 2012/13. Challenging the ability to apply for a negotiated penalty at a given stage of the criminal procedure would be an overinclusion into the Directive. The AG especially focuses on Art. 6(4) of the Directive, which regulates the accused person's right to be informed of any changes in the accusation, "where this is necessary to safeguard the fairness of the proceedings." According to the AG, Art. 6(4) intends to enable the accused person to understand, respond to, and dispute the accusation (and the change thereto), but does not entail the obligation for the national courts to provide all information on any and every consequence of that change. The notion of the "fairness of the proceedings" does not alter this result because it correlates with the material scope of the rights enshrined in the Directive.

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Ultimately, the AG examined the implications of Art. 48(2) of the Charter and concludes that it cannot be used to expand the scope and content of the procedural obligations defined in the respective EU secondary law. In other words: there is no obligation beyond what already exists in Directive 2012/13.

As a result, EU law does not preclude procedural rules such as the ones at issue, which allow the accused person to request a negotiated penalty after the beginning of the trial only if there is a change in the accusation that is of factual nature and not when the change is of a legal nature.

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