

CJEU: Italian Law Differentiating Applicability of Negotiated Settlements in Line with EU Law

Thomas Wahl

In its [judgement of 13 June 2019 in case C-646/17](#) (criminal proceedings against *Gianluca Moro*), the CJEU followed the conclusions of Advocate General (AG) *Bobek* of 5 February 2019 (for the AG's opinion, see [eucrim 1/2019, 24-25](#)). It confirmed that the following legal situation is in line with the provisions of Directive 2012/13 on the right to information in criminal proceedings and Art. 48(2) CFR: under Italian law, an accused can apply for a negotiated penalty – known as “*patteggiamento*” – after the start of the trial if the facts of the criminal charge are modified, but not if the charge is legally reclassified.

The CJEU first rejected the position of the Italian government that the request for a preliminary ruling is inadmissible, because Directive 2012/13 is only applicable if there is a cross-border element in the main proceedings. Like the AG, the CJEU argued that the Directive contains minimum rules for criminal procedures in also purely domestic cases that do not have a cross-border constellation.

As regards the material question, the CJEU focused on the interpretation of Art. 6(4) of Directive 2012/13, 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 CJEU, the Directive stipulates how the right to fair trial can be guaranteed as far as the information of the suspect or accused person is concerned. This right encompasses the obligation to inform the accused person if the charge has been modified, be the modification of a factual or a legal nature. The accused person must be in a position to effectively react to a possible change in the nature of the accusation. By contrast, the Directive does not entail any legal obligation to guarantee the accused person's right to apply for a negotiated penalty during the trial.

Art. 48 CFR does not change this result. Its guarantee to respect the rights of the defence of anyone who has been charged does not include any obligation that goes beyond what already exists in Directive 2012/13.

In sum, Union law does not preclude domestic procedural rules that 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 a factual nature and not when the change is of a legal nature.

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