

Aija Conference Prague

Questionnaire of the Commissions Antitrust – Commercial Fraud – Litigation

*Settle for less...? Or for more! Tips on
timing, confidentiality and strategy in
(multijurisdictional) settlement
arrangements*

Nation: Italy

Reporter: Roberto Viscomi

Questionnaire

General Issues

3.1.1 Does your jurisdiction provide for settlement procedures with the prosecution authorities and/or the Courts in criminal procedures?

The settlement procedure in criminal process was introduced in Italy in the year 1989 – before that date the settlement procedure did not exist and the ratio was of course to make faster process which for its nature would have necessarily end with a sentence of guilty - when a total restoration of the Code of Criminal Procedure was set and it is called “Patteggiamento” e.g. “application of the punishment upon request of the parties” and for parties it means the Prosecutor and the person under investigation or the person accused. The “Patteggiamento” is set out in the above mentioned Code under article 444 and following articles and its benefit is that the punishment provided for the crime is reduced in the reason of one third.

This procedure can be called when for the crime committed the punishment, reduced as said above, is equal to two years of detention alone or combined with monetary punishment.

In 2003 the public law no.134/2003 has introduced the “Patteggiamento allargato” which has the same scheme of the ordinary “Patteggiamento” as said above but it allows the parties to agree on the basis of a punishment that, reduced by a one third does not overtake the term of imprisonment, alone or in combination with monetary punishment, of 5 years.

3.1.2 Are settlement procedures a well-accepted part of criminal procedures in your jurisdiction or are they considered as being critical with regard to the function of a criminal procedure aiming at the “search for the truth”.

In our jurisdiction they are well-accepted as part of the criminal procedures and as we will consider in the next questions there is no function for the “search of the truth”. Of course in some way it is part of the defensive or accusatory strategy.

3.1.3 Are settlements commonly used in criminal procedures in your jurisdiction?

Yes they are, of course with the limits of the law. It depends on the strategy of the lawyer to make a request of settlement or to accept a request of settlement made by the Prosecutor.

3.2 Procedural issues

3.2.1 What are the conditions for settlements in criminal procedures?

The settlement cannot be requested for all the crimes. The settlement for example is not allowed for mafia association. The “Patteggiamento” is set out in the above mentioned Code under article 444 and following articles and its benefit is that the

punishment provided for the crime is reduced in the reason of one third.

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3.2.2 **Can a settlement be reached at any time of the procedure (investigation and court proceeding) or is this option restricted to a certain stage (e.g. only in the investigative procedure)?**

The settlement can be make during the investigation or during the preliminary Court proceeding; for some crimes where the preliminary proceeding is not provided the nit must be requested before the Court proceeding.

Which parties of the criminal procedure have to be involved in the settlement discussions?

Person under investigation or accused; the Prosecutor

1.1.1 **Which party can take the initiative for a settlement: The court / the prosecutor / the accused or all of them?**

The request of settlement can be done by the person under investigation or the person accused; from the Prosecutor and this settlement needs to be approved by the Judge.

1.1.2 **Please explain the formalities that have to be met for a valid settlement. What are the consequences of a formally invalid settlement?**

The settlement has always to be validated by the Judge which can be the GIP (Giudice Indagini Preliminari o from the GUP which is the Giudice per Udienza preliminare) or the Judge of the Court if there is not preliminary hearing where not provided by the Code.

1.1.3 **Will the settlement be executed itself or will the settlement results only become part of the final court judgement?**

The settlement needs to be pronounced by sentence; the Judge that provided the sentence of the settlement could not be the same Judge of the final Court judgement.

1.1.4 **Is it possible to settle any relevant question or is the settlement procedure restricted to certain questions only (e.g. settlement only with regard to a minimum / maximum sentence; no settlements with regard to the question of guilt)?**

The article 444 c.p.p. set out excludes some crimes which cannot be object of the settlement e.g. the recidivismo, mafia's crimes, sexual crimes.

1.1.5 **Is it necessary for reaching a settlement to admit being guilty? If so, will the confession remain valid in case the settlement eventually fails?**

It is not necessary to admit to be guilty

1.2 **Enforcement of settlement**

1.2.1 **Is the settlement binding for the criminal court or is it possible - and under which conditions - to deviate from the settlement in its final judgement?**

The settlement needs to be decided by its own and cannot be deviate to the final judgement

1.2.2 **Is a settlement / a court decision based on a settlement always subject to appeal or can the parties agree to waive the right of appeal?**

The judgement settle can just be appealed to the third grade I mean an appeal to the Corte di Cassazione as set out 606

of Code of Criminal Procedure and the cases are no respect of the procedure provisions

1.3 Confidentiality and privilege

1.3.1 **Does the individual / company being damaged by criminal behavior have a right of access to the criminal files in order to gather evidence for potential damage claims?**

There is not cross examination and then no evidence in the procedure of settlement and for this cannot be used as a prove for the civil hearing.

3. 4. 2 What impact does the criminal court's decision that the accused is guilty have on potential damage claims? Will a civil court be bound by the criminal court's decisions and vice versa?

In Italy the settlement does not have its efficacy in the civil judgment because it is not equal to a guilty sentence.