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Crime Prevention and Criminal
Justice Programme

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Centro Studi "Federico Stella"
sulla Giustizia penale e la Politica criminale

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30th Enrico de Nicola Conference on

**CORPORATE CRIME AND NEGOTIATED JUSTICE:
COMPARING EXPERIENCES**

Milan, 28 October 2016

Centro Congressi Fondazione Cariplo
Via Romagnosi 8, Milano

promoted and organized by

Fondazione Centro nazionale di prevenzione e difesa sociale -CNPDS
Commissione Enrico de Nicola di diritto e procedura penale
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Milan Bar Association
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The 30th Enrico de Nicola criminal justice Conference on *Corporate crime and negotiated justice: comparing experiences* intends to explore the theme of negotiated criminal justice in the economic crime sector from different points of view. Even if this concept is rather vague and not yet well defined, it may include restorative and cooperative forms of justice *post-delictum*, functional for the mitigation or exclusion of criminal liability, and possible prosecution agreements between the parties for the purpose of a more rapid and simplified conclusion of the criminal proceedings.

Negotiated criminal justice is now quite common in the Italian legal system in the sector of corporate crime, with regard to the liability of both individuals and collective entities. Substantive general legal tools are systematically applied to criminal proceedings in the matter of economic crimes (like the immediate payment of penalties, the attenuating circumstances or the conditional suspension of penalties related to damage restoration through indemnification or restitution, etc.). And this is also true for procedural legal instruments (plea-bargaining and other alternative procedures).

Significant examples including negotiation and diversion mechanisms are found in criminal tax law, in corporate law, in environmental and landscaping law, and in the area of safety in the workplace. In the framework of entities' criminal liability, particular forms of exclusion or mitigation of liability are envisaged, which encourage legal persons to adopt restorative conducts. In addition, some legal experts suggest the exclusion or mitigation of the corporations' liability in relation to restorative conducts and to self-reporting. These hypotheses are currently under discussion for reform purposes.

Independently of the provision of such specific instruments in the legal system, in judicial practice negotiations may take place in several cases, in particular between prosecutor and defendant, when dealing with complex cases. The aim is to protect and balance different interests that must be equally protected (e.g. victim, enterprise, market, employment and offender interests).

Therefore, in both law and case law, there is an emergence of pragmatic needs, such as restorative justice, the reconstruction of conditions of corporate legality, the victims' protection and the relief of the over-burdening of courts, through the widespread use of rewards, benefits and incentives for the offender, moving beyond mere punitive measures.

Considering the above, it is now necessary to open a debate on the practical and theoretical effects of the application of such negotiation mechanisms on the function of criminal law and on the purpose of penalties, on the dogmatic categories of criminal offence, on the function of criminal proceedings and, consequently, on the dichotomy between negotiation and jurisdiction. There is also a need to reconsider the offender's fundamental rights, by reducing the guarantee measures consisting in formal legality and jurisdiction, while attaching more importance to the objective of rehabilitation, favouring greater efficiency of the judicial system and conflict resolution through a discursive/dialectical approach rather than an opposed/adversarial approach.

Since these experiences refer mainly to the common law systems it is necessary to analyse the options available in such systems, in order to evaluate the costs and benefits of 'expanded' negotiation hypotheses, particularly for corporate crimes. The transposition of such legal instruments or, in any case, the proposals advanced in this respect also in the European systems of continental law, based on a different level of application, contribute to encouraging further discussions.

The conference intends to provide a broad overview of this complex topic, so as to encourage a debate on criminal policy issues and on the juridical base underlying negotiated criminal justice options, and to narrow the gap between legal theory and juridical practice, by comparing the experiences of scholars and legal practitioners.

PROGRAMME

Friday 28 October 2016

9 a.m.

Opening Remarks

SERGIO URBANI, *Director General, Fondazione Cariplo*

LIVIA POMODORO, *President, Fondazione CNPDS*

REMO DANOVI, *President, Milan Bar Association*

GIUSEPPE CERNUTO, *Judge, Court of Milan, member of the Milan Local Educational Structure of the Italian School for the Judiciary*

9.30 a.m.

Session I

Chair

GABRIO FORTI, *Professor of Criminal Law and Criminology, Milan Catholic University*

- **Introduction**

DOMENICO PULITANÒ, *Emeritus Professor of Criminal Law, University of Milano Bicocca*

10 a.m.

- **Compliance, negotiations and restorative justice in trials involving economic crimes**

MASSIMO DONINI, *Professor of Criminal Law, University of Modena*

10.25 a.m.

- **Corporate Crime and Negotiation Approach**

FRANCESCA RUGGIERI, *Professor of Criminal Procedural Law, University of Insubria*

10.45 a.m.

Coffee Break

11 a.m.

Chair

STEFANO MANACORDA, *Professor of Criminal Law, University of Naples II*

11.10 a.m.

- **Corporate Criminal Enforcement in the United States: Using Carrots and Sticks to Turn Corporations from Criminals into Cops**

JENNIFER H. ARLEN, *Norma Z. Paige Professor of Law; Director Program on Corporate Compliance and Enforcement, New York University School of Law*

11.35 a.m.

- **Deal-making in Criminal Justice: Hands across the Sea or under the Table?**

PETER ALLDRIDGE, *Drapers' Professor of Law, Queen Mary University of London*

12 p.m.

- **État du débat actuel en France: à propos de la loi Sapin-II**

ANTOINE GARAPON, *magistrat, secrétaire général de l'Institut des hautes études sur la justice-IHEJ*

12.25 p.m.

- **Plea-Bargaining and Economic Crime: Exploring the Tensions and Contradictions in Canadian Law**

JENNIFER QUAID, *Assistant Professor, Civil Law Section Faculty of Law, University of Ottawa*

2.30 p.m.

Session II

Chair

GIOVANNI CANZIO, *First President of the Court of Cassation*

3 p.m.

- **The economic aspects**

MICHELE POLO, *Professor in Economics, Bocconi University*

- **Interlocutory injunctions, precautionary measures and restorative objectives in trials involving economic crimes**

MASSIMO CERESA GASTALDO, *Professor of Criminal Procedural Law, Bocconi University*

3.30 p.m.

- **Guilt of the individual and guilt of the entity in the parties' punishment**

MATTEO CAPUTO, *Adjunct Professor of Criminal Law, Salento University*

4 p.m.

Coffee Break

4.20 p.m.

Round Table

The voice of practitioners

Chair

SERGIO SEMINARA, *Professor of Criminal Law and Commercial Criminal Law, University of Pavia*

- GUIDO ALLEVA, *Lawyer in Milan*
- ANDREA BIGNAMI, *President of the Anti-money Laundering Commission of the Milan Board of Chartered Accountants and Accounting Experts*
- FRANCESCO CENTONZE, *Professor of Criminal Law, Milan Catholic University*
- FRANCESCO GRECO, *Chief Prosecutor, Court of Milan*
- DIMITRI VLASSIS, *Chief, Corruption and Economic Crime Branch, Division for Treaty Affairs UNODC*

Official Languages

English and Italian with simultaneous interpretation

Conference Secretariat

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